87-804

No. -

Supreme Court, U.S.
FILED
OCT 22 1987
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

JAKE P. BEASON,

Petitioner,

vs.

BOARD OF SCHOOL DIRECTORS OF THE CITY OF MILWAUKEE, et al.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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QUESTION PRESENTED FOR REVIEW

Does *Celotex Corp.* v. *Catrett*, U.S. , 91 L.Ed.2d 265, 106 S.Ct. 2548 compel or allow for summary judgment to resolve claims of racial discrimination and infringement of first amendment political speech by a public school board and administration against a black physically disabled teacher brought pursuant to 42 U.S.C. 1981, 1983 and 1985—the civil rights act?

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Petitioner prays that a writ of certiorari issue to review the decision of the United States Court of Appeals for the Seventh Circuit filed July 27, 1987.

OPINION BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit was filed on July 27, 1987 and is set forth in the appendix, pages App. 1-3.

JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. § 1254.

STATEMENT OF THE CASE

Petitioner Jake Beason is a physically disabled black man, suffering from paraplegia. Petitioner first commenced employment with the Milwaukee Public Schools at North Division High School in September, 1967. However, Mr. Beason was terminated for allegedly failing to supply certain materials to the Board of School Directors after his appointment in 1967. Mr. Beason was, subsequently, reinstated and has a seniority date of January 23, 1968. Petitioner held various assignments as a high school teacher and junior high school teacher in the Milwaukee Public Schools between September, 1967 and the 1982-83 school year. Petitioner holds a MA degree in black studies/minority studies from Northeastern Illinois University. He was one of the first teachers in the Milwaukee Public Schools to assist in the preparation and teaching of a program of black studies.

Petitioner had, during his tenure with the Milwaukee Public Schools, actively spoken out against and worked to eradicate systematic discrimination against members of the black race—both students and teachers—in the Milwaukee Public Schools. He had publicly criticized the Milwaukee Public Schools' desegregation plan as racist and discriminatory and accused the Milwaukee Public Schools administration of racism in its adoption and use of textbooks used for the U.S. history class at Custer High School in the local media. Petitioner was reassigned from North Division High School in September, 1977 to Custer High School. Petitioner taught social studies at Custer until he was "excessed" from that high school in 1982; allegedly because of an expected drop in enrollment. Petitioner was the only black teacher in the social studies department and

the most experienced teacher in the field of Afro-American history at the school. Although the student enrollment at Custer High School was over 50% black at the time petitioner was excessed, he was replaced by another teacher from North Division High School who had less seniority than he did; albeit there was clear precedent for the principal to retain petitioner at Custer by having him teach Afro-American history and assigning him to a study hall or cafeteria duty. That same year (1982) petitioner substituted for a teacher at Custer who taught only four U.S. history classes and was assigned to cafeteria duty. That teacher had only approximately five years seniority.

Commencing in 1982, the respondents removed petitioner from a permanent placement at Custer High School and designated him as on "excess status" as a substitute teacher on day to day call to fill in for teachers in the system absent due to illness.

In spite of the petitioner's paraplegic condition, the respondents made the assignments of the petitioner on a day to day basis in such a fashion as to assign the petitioner to inconvenient schools which, in many instances, involved facilities inadequate for access to the petitioner because of his physical handicaps. Respondents also reduced the payment of salary to the petitioner by docking his wages for minor tardiness where other teachers, not physically impaired, have not had their wages docked for tardiness.

Petitioner Beason held Certifications designated 725 and 745 by the State Department of Public Instruction. The "excess status" imposed upon the petitioner was made on the basis that he did not have proper certification to teach world geography. However, following the school administration's "excessing" of petitioner from Custer High School, ostensibly for not being certified to teach geography, one Ms. Claudia Roessl, a white woman, was assigned to teach art and geography at Custer. However, Ms. Roessl was not certified to teach geography but was only certified to teach

art. The respondents admit that Ms. Roessl was not certified to teach geography and that the assignment should not have been made. Moreover, Mr. Beason, who was teaching social studies at Custer before he was excessed, had previously taught geography in the Milwaukee Public Schools, albeit he was not certified to teach that subject. However, Ms. Roessl was clearly not certified to teach geography and she was junior in seniority to petitioner Beason.

Petitioner Beason also found copies of all of the articles that he had written criticizing the Milwaukee Public Schools' administration and policies in his personnel file. Petitioner had not requested that such articles be placed in his personnel file.

The respondents also knowingly assigned the petitioner to excess status and to teach in areas out of his expertise in order to compel the petitioner to resign or retire from his employment in the Milwaukee Public School system, although the excess status was contrary to his seniority, particularly when weighed against the respondents' hiring of a less senior teacher to teach a course she was not certified to teach at the same high school that the petitioner was excessed from for his lack of certification to teach the same course that the teacher hired by the school administration was uncertified to teach.

After petitioner brought suit against the Milwaukee Public Schools and after he had filed for a disability retirement, he was offered a regular teaching position in January, 1986 by the respondents. Petitioner declined this late-arriving offer.

The petitioner, Jake Beason, commenced this action in February, 1985 against the respondent Milwaukee Board of School Directors of the City of Milwaukee and others in the United States District Court for the Eastern District of Wisconsin alleging discrimination by the respondents because of the petitioner's race and discrimination against the petitioner because of his exercise of free speech.

Petitioner amended his Complaint on July 1, 1985. The respondents answered petitioner's Amended Complaint on July 18, 1985 and a Stipulation and Order extending discovery was entered and the pre-trial conference and trial dates were cancelled on November 19, 1985. On May 20, 1986 a Scheduling Order setting the Final Pretrial for September 25, 1986 and a jury trial to begin on October 20, 1986 was entered.

On August 7, 1986 respondents moved for summary judgment, dismissal, and alternatively for motion in limine and submitted supporting briefs and affidavits. On September 3, 1986 the petitioner filed his Affidavit in opposition to the respondents' motion for summary judgment.

On November 13, 1986 the Court entered its Decision and Order granting summary judgment and dismissing petitioner's action. Petitioner filed a timely Notice of Appeal from this Order of November 13, 1986.

After submission of briefs and oral argument on April 17, 1987 in the Court of Appeals for the Seventh Circuit the Court affirmed the grant of summary judgment in an unpublished order dated July 27, 1987. App. 1-3.

REASONS FOR GRANTING THE WRIT

I.

THE UNITED STATES SUPREME COURT SHOULD CLARIFY FOR THE LOWER FEDERAL COURTS THAT *CELOTEX CORP.* V. *CATRETT*, U.S. , 91 L.Ed.2d 265, 106 S.Ct. 2548 DOES NOT AUTHORIZE SUMMARY JUDGMENT TO RESOLVE CIVIL RIGHTS AND FIRST AMENDMENT POLITICAL SPEECH CASES.

The Court of Appeals' decision here was based solely upon *Celotex*. *Celotex* is the only case citation made in the opinion. The use of *Celotex* to ratify summary judgment of civil rights litigation is alarming and inimical to the right of

minorities to access to the federal courts to redress claims of discrimination against them by state institutions—in this case the public school board and administration of Milwaukee County, Wisconsin.

Before *Celotex* the application of traditional rules attending motions under Rule 56 would clearly have compelled reversal of the summary judgment granted the defendants by the District Court.

The plaintiff had filed his affidavit in opposition to the motion and it was undisputed that the teaching position which had been usurped from him had been assigned to a white teacher with less seniority. Drawing all permissible inferences from the evidence IN FAVOR of the petitioner as was the law should have resulted in denial of the motion for summary judgment. See, e.g., *National Ind. Inc.* v. *Republic Nat. Life Ins. Co.*; 677 F.2d 1258 (9th Cir. 1982), *Black Panther Party* v. *Smith*; 661 F.2d 1243 (DC Cir. 1981); *Frey* v. *Woodward*, 748 F.2d 173 (3rd Cir. 1984).

In addition, of course, the principles of *Adickes* v. *S.H. Kress Co.*, 398 U.S. 144, 90 S.Ct. 1598, 26 L.Ed.2d 142 (1970) and *McDonnell Douglas* v. *Green*, 411 U.S. 792 (1973) are implicitly reversed by the Court of Appeals' opinion in the case at bar.

The existence of a prima facie case of discrimination on both race and first amendment grounds is evident from the very facts quoted in the opinion of the Court of Appeals:

> ". . . Beason brought an action alleging that the defendants removed him from his full-time teaching position . . . because of his race and because he made public statements critical of defendants' policies. . .
>
> The Milwaukee Public Schools Administration ("MPSA") removed plaintiff, a physically disabled black man, from his permanent teaching position at Custer High School. In his place, the MPSA hired . . . a white female to teach art and geography. Although

> Beason had been teaching geography, neither he nor (the white replacement) is certified to teach it . . .
>
> . . . his personnel file contains copies of all the published articles that he had written that are critical of the MPSA. He asserts that . . . school officials were hostile to his views and retaliated by removing him from his permanent position[1] . . . Beason states that his seniority was changed, but he does not challenge the way it was changed . . . Beason has an adjusted date because he was terminated due to his failure to supply certain information . . ."

Such facts are truly a classic example of a case which demands ultimate resolution of the underlying motives and intent by the finder of fact. This case is clearly not one to be resolved by summary judgment—for any party.

Civil rights claims are particularly inappropriate for resolution by summary judgment. *Randle* v. *City of Chicago*, 527 F.Supp. 1 (DC Ill. 1979); *Ustrack* v. *Fairman*, 781 F.2d 573, cert. den. 107 S.Ct. 95 (7th Cir. 1986); *McPherson* v. *Rankin*, 736 F.2d 175 (1984); *Harden* v. *Adams*, 760 F.2d 1158, reh.den. 767 F.2d 938 (1985); *Equia* v. *Tompkins*, 756 F.2d 1130 (1985); *Ray* v. *Edwards*, 725 F.2d 655 (1984). Also cf. *Warfield* v. *Adams*, 582 F.Supp. 111 (DC Ind. 1984) where there was no evidence submitted that the position was filled by a white person.

The Court of Appeals for the Seventh Circuit has utilized *Celotex* in a fashion to extend it beyond its intended perimeters and has thereby occasioned a miscarriage of justice in a racial discrimination and first amendment infringement case.

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[1] The opinion admittedly argues against the facts and accepts all of the defenses propounded by the respondents. That is the appropriate function of the advocates not the Court of Appeals, it is respectfully submitted; and ultimately the responsibility of the properly instructed jury. The Court of Appeals should have argued the facts most favorably to the petitioner not against him.

CONCLUSION

It is respectfully submitted that the Supreme Court should grant the Petition for Certiorari in order to clarify the application of *Celotex Corp.* v. *Catrett*, U.S. , 91 L.Ed.2d 265, 106 S.Ct. 2548 to civil rights and first amendment infringement litigation.

Respectfully submitted,

ROBERT E. SUTTON
Attorney for Petitioner

JUDGMENT—ORAL ARGUMENT

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

Argued April 17, 1987

July 27, 1987.

Before

Hon. WILLIAM J. BAUER, *Chief Judge*

Hon. WALTER J. CUMMINGS, *Circuit Judge*

Hon. JESSE E. ESCHBACH, *Senior Circuit Judge*

JAKE P. BEASON,
Plaintiff-Appellant,

No. 86-3049 vs.

BOARD OF SCHOOL DIRECTORS OF THE CITY OF MILWAUKEE, et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Eastern District of Wisconsin.

No. 85-C-0261

John W. Reynolds, *Judge*

ORDER

Plaintiff, Jake Beason, appeals the district court's grant of summary judgment in favor of defendants, Board of School Directors of the City of Milwaukee. Beason brought an action alleging that defendants removed him from his full-time teaching position at a local high school and assigned him on a random basis as a substitute teacher because of his race and because he made public statements critical of defendants' policies regarding the teaching of black history in the Milwaukee public schools. Plaintiff sought permanent assignment to a particular school and

damages. We affirm the district court's grant of summary judgment for the defendants because the plaintiff has not established any connection between the job action taken and his race or political views.

I.

The Milwaukee Public Schools Administration ("MPSA"), removed plaintiff, a physically disabled black man, from his permanent teaching position at Custer High School. In his place, the MPSA hired Claudia Roessl, a white female to teach art and geography. Although Beason had been teaching geography, neither he nor Roessl is certified to teach it. Defendants admit that they erred in assigning Roessl to Beason's position but they argue that his termination was motivated neither by racial discrimination nor a result of his open criticism of school policy.[1] Instead, the defendants argue that Beason was removed from his position at Custer High School because he lacked certification to teach the needed classes and because he lacked seniority.

Plaintiff argues that his personnel file contained copies of all the published articles that he had written that are critical of the MPSA. He asserts that certain unnamed school officials were hostile to his views and retaliated by removing him from his permanent position. However, he fails to produce any evidence that establishes a connection between his removal and the MPSA keeping copies of his articles on file. He has produced no evidence to prove that the people who made the final decision to remove him had seen these articles or acted on the basis of them. Beason states that his

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[1] Although Roessl was junior in seniority to Beason, she was certified to teach art. Beason was not certified to teach geography or art. Had a teacher become available to teach both art and geography, the MPSA would have assigned that teacher to Custer and reassigned Roessl. (Thomas Aff. § 25, Exh. 13, Supp. A. pp. 257-59; 293-94).

seniority was changed, but he does not challenge the way it was changed.[2]

Under Rule 56(c) of the Federal Rules of Civil Procedure summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as matter of law." It is appropriate here, since Beason failed to present any evidence to show that he could meet his burden of proving that the defendants terminated him from his permanent position because of his race or his publications critical of the MPSA. Because Beason has not alleged specific facts and circumstances which demonstrate that a clear issue exists for trial, the grant of summary judgment for the defendant was proper. *Celotex Corp. v. Catrett*, ____ U.S. ____, (1986). For the foregoing reasons, the judgment of the district court is

AFFIRMED.

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[2] Beason began his employment with MPSA at North Division High School in September 1967. His seniority date, however, is January 23, 1968. Beason has an adjusted date because he was terminated due to his failure to supply certain information to the Board of School Directors after his appointment in 1967.

JUDGMENT—ORAL ARGUMENT

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

July 27, 1987.

Before

Hon. WILLIAM J. BAUER, *Chief Judge*

Hon. WALTER J. CUMMINGS, *Circuit Judge*

Hon. JESSE E. ESCHBACH, *Senior Circuit Judge*

JAKE P. BEASON,
Plaintiff-Appellant,

No. 86-3049 vs.

BOARD OF SCHOOL DIRECTORS OF THE CITY OF MILWAUKEE, et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Eastern District of Wisconsin.

No. 85-C-261

John W. Reynolds, *Judge*

This cause was heard on the record from the United States District Court for the Eastern District of Wisconsin, _____ Division, and was argued by counsel.

On consideration whereof, IT IS ORDERED AND ADJUDGED by this Court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, AFFIRMED, with costs, in accordance with the order of this Court entered this date.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

JAKE BEASON, *Plaintiff,* v. MILWAUKEE BOARD OF SCHOOL DIRECTORS OF THE CITY OF MILWAUKEE, et al., *Defendants.*	Civil Action No. 85-C-261

DECISION AND ORDER

Plaintiff Jake Beason is a physically disabled black man who brings this action alleging that the defendants removed him from his full-time teaching job at a local high school and assigned him on a random basis as a substitute teacher because of his race and because he made public statements critical of the defendants' policies regarding the teaching of black history in Milwaukee public schools. Jurisdiction arises from 28 U.S.C. § 1331 because the plaintiff alleges that defendants' action resulted in a violation of his civil rights. Plaintiff seeks permanent assignment to a particular school, compensatory and punitive damages, and attorney's fees. The defendants have moved for summary judgment or, alternatively, for an order that certain evidence be excluded at trial.

Defendants' motion for summary judgment will be granted because there are no disputed issues of material fact, and the defendant is entitled to judgment as a matter of law. The facts are taken from the submissions of the parties. The defendants have established through uncontroverted affidavits and documents that the personnel decisions made regarding Mr. Beason resulted from established

policies and procedures, and that neither race nor constitutionally-protected speech played a role in those determinations. The plaintiff has responded with his own affidavit, stating the information upon which he bases his conclusion that he has been the victim of discrimination.

Plaintiff began teaching in the Milwaukee Public Schools in 1967 and was assigned to Custer High School in the fall of 1977. He was "excessed," or removed, from his position at Custer for the 1982-83 school year, but he continued to receive the same salary and benefits and possessed the same seniority. His teaching assignment was changed to different schools on a day-to-day basis.

Teachers in Milwaukee public schools are assigned to the various schools according to the staffing requirements at those institutions. The positions are filled by teachers who are properly certified to teach the required subjects and on the basis of seniority. The assignment process is governed by the collective bargaining agreement the school system and the teachers' union have worked out and by various state and federal requirements, including federal requirements that certain percentages of Milwaukee public school teachers be black. The collective bargaining agreement also contains a grievance and arbitration mechanism, but no union action was taken with regard to plaintiff's claims.

In support of their motion for summary judgment, the defendants have submitted a brief, voluminous affidavits, deposition transcripts, and documents which establish conclusively that the plaintiff was removed from his position at Custer High School pursuant to the normal policies and procedures of the defendants. In response, the plaintiff has submitted an affidavit in which he states his personal belief that he was excessed due to his race and his criticism of the defendant school system. The plaintiff has attached various articles he has written over the years which are critical of the black studies program in the Milwaukee schools. He

does not challenge the truthfulness or accuracy of the affiants or documents the defendants have presented regarding his situation.

Rather, ther plaintiff relies on the fact that some of the articles he has written over the years were in his personnel file, and his assertion that certain unnamed school officials were hostile to his views. While he states his feeling that he was the most experienced teacher in the field of Afro-American History at Custer, he does not challenge defendants' determination that he was appropriately excessed from his position because of his lack of certification to teach the needed classes and of his lack of seniority. He asserts that an exception was made for some unnamed teacher in 1982. Finally, he states that he was excessed from North Division High School in 1977 because his seniority date was changed after he started teaching. These circumstances lead the plaintiff to the conclusion that he has been punished for his race and his political views.

In light of the evidence the plaintiff has produced, the conclusion is not reasonable. Plaintiff has failed to create a material issue of fact with his affidavit. To recover in this case, he would need to establish some connection between the job action taken and his race or political views. Yet the defendants have explained, and the plaintiff has not disputed their explanation, that the plaintiff was excessed according to well-established criteria and not on the basis of his race or political views. The plaintiff does not challenge the criteria or claim that he had the necessary seniority or certification to retain his position at Custer High School.

The plaintiff has not provided even a shred of evidence that his race or political views played a role in his dismissal. Rather, he points to articles he has written which were critical of the school system, but he does not claim that the people who made the final decision were aware of his views or of the articles he wrote. In fact, some of the articles were written after he was excessed. He states his belief that he was the most experienced teacher at Custer, but he does not

claim that he was, as is required, the most senior teacher certified to teach the needed classes. He claims, but does not specifically support the claim, that there was precedent for him to remain at Custer, but he does not explain what that precedent was or how his race or political views prevented him from enjoying similar treatment. The plaintiff states that his seniority date was changed, but he does not challenge the way it was changed. Finally, he states that he was excessed in 1977, but he does not state how that incident, now eight years old, relates to this lawsuit and his race and political views.

In support of their motion for summary judgment, the defendants have established by uncontroverted affidavits that the plaintiff was removed from his full-time teaching position at Custer High School pursuant to established procedures and that the plaintiff's race and political views did not affect the determination to remove him. The plaintiff's response to this motion does not challenge the defendant's explanation of the reasons for his removal. Neither does the plaintiff provide the court with any factual support for his claims that his race and/or political views affected the defendants' decision to terminate him.

Defendants' motion for summary judgment will be granted because the plaintiff has failed to present any evidence to show that he could meet his burden of proving causation if this case proceeded to trial. *Celotex Corporation v. Catrett*, 106 S.Ct. 2548, 2553 (1986).

IT IS THEREFORE ORDERED that the defendant's motion for summary judgment is granted and that this action is dismissed.

Dated at Milwaukee, Wisconsin, this 13th day of November, 1986.

BY THE COURT:

JOHN W. REYNOLDS
Senior Judge

Supreme Court, U.S.
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DEC 21 1987
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STATEMENT OF THE CASE

Respondents do not accept petitioner's statement of the case. Petitioner's statement deletes many significant uncontested facts. An alternative statement of the case is herewith filed. In addition, respondents are enclosing a supplemental appendix. It includes the only affidavit in response to the motion for summary judgment filed by

petitioner. The motion for summary judgment filed by respondents was supported by eleven affidavits, two depositions, one filed in its entirety. One of the 11 affidavits is an affidavit of counsel putting into the record sections of the plaintiff's adverse deposition taken by the defendants. There were no facts supplied by the respondents which were challenged by the petitioner. For the convenience of the court, the record below has been lodged with the Clerk.

———o———

THE FACTS REGARDING PLAINTIFF'S CLAIM VIOLATION OF FIRST AMENDMENT FREEDOMS

At the time this matter was commenced, Mr. Beason had been excessed from a regular teaching assignment at a high school operated by respondents known as Custer High School. Excessing simply means that a teacher is reassigned from one school to another school. Where, as here, Mr. Beason has narrow certification (only history and social studies), another school may not be soon found. Then the teacher is placed on day-to-day service meaning he is assigned to a school to fill in for absent teachers daily. All salary, benefits, and other emoluments of employment are precisely the same as if the teacher had a regular school to teach in.

Mr. Beason was excessed because of a reduction in the number of history sections being taught at Custer. That reduction in the number of history sections being taught was related to a drop in the number of history sections for which students at Custer High School were signing up.

Previous to being a regular history teacher at Custer, Mr. Beason was a regular teacher at another high school operated by respondents, North Division High School. When Mr. Beason was excessed from North Division to Custer at the end of the 1976-77 school year there were a total of 43 sections of history being taught at Custer. The school year 1982-83 saw only 31 sections of history being taught at Custer. This constituted a drop of 13 sections of history and Mr. Beason has not challenged those facts. Mr. Beason was the least senior member of the history department at Custer High School. Mr. Beason has not challenged that fact. Mr. Beason makes many allegations regarding race and retaliation, but he has never refuted the fact that he was excessed from Custer to day-to-day service because of his being the least senior employe in the social studies department, the reduced number of history sections being taught, and his relatively narrow certification which prohibited him from teaching other courses at Custer.

An extensive deposition was taken of Mr. Beason's union representatives. That was the deposition filed with the trial court in its entirety. His union representative detailed exactly how the system of teacher reassignments and excessing operated. Although Mr. Beason discussed his being excessed with the union, the union could find no contract violation in the manner in which he was excessed. Mr. Beason did not challenge those facts.

Mr. William Thomas, the High School Principal at Custer, made the decision to excess Mr. Beason. Once excessed, system-wide seniority determined where, and if Mr. Beason would next be assigned. Ms. Helen Collins, a black person, and a co-defendant herein, was the staffing

specialist who was responsible for attempting to find another school for Mr. Beason to teach. She could not until January 29, 1986 at which time she offered the opening to Mr. Beason. (Supp. App. p. 133) He declined the opening, stating that he was seeking a disability retirement. Mr. Beason, during the interim was placed on day-to-day service. Mr. Beason lost no property rights as a result of day-to-day service.

Mr. Beason claims that his excessing was in retaliation for speaking out in opposition to racism in Milwaukee Public Schools. Mr. Beason during discovery has cited four examples of the exercise of his free speech. Two of those matters are articles he wrote. (Supp. App. pp. 62-67) However, the articles were published *after* he was excessed from Custer High School. (Kritzer Aff. ¶ 2; Supp. App. pp. 27, 28) Consequently, they could not have been the basis of any decision to excess Mr. Beason in 1977 or 1982. As to one of the articles, Mr. Thomas personally commended Mr. Beason on the article, and Mr. Beason admitted the fact. (Supp. App. p. 74) Mr. Beason stated that one of the letters was published in *The Milwaukee Journal.* However, that letter was dated three school years before Mr. Beason was excessed from Custer. (Supp. App. p. 68) *The Milwaukee Journal,* however, could not find a record of the publication of the letter during September, 1979. (Kritzer Aff. ¶ 3; Supp. App. p. 28) Mr. Beason provided no evidence that the existence of the letter was even known by either Mr. Thomas or Ms. Collins. Mr. Beason wrote a letter to Dr. McMurrin, the Superintendent of Schools. (Supp. App. pp. 23, 70) It makes certain proposals and can hardly be considered derogatory. Plaintiff

produced no evidence to show it was sent to either Mr. Thomas or Ms. Collins, or that they even knew about the letter.

Mr. Beason was actually invited to participate in forums by respondents where his expressions were solicited. Mr. Beason was asked to talk on the subject of differing perspectives of "Afro-American Heritage Since Emancipation." Mr. Beason was sent a complimentary letter for his involvement in the program. Mr. Beason admits he was asked to speak on such topics. (Supp. App. p. 76) Mr. Beason, earlier in his career in Milwaukee Public Schools, was asked to serve on a panel to aid in the work in establishing what became the Afro-American Heritage course in Milwaukee Public Schools. Other persons on that committee in fact received promotions within Milwaukee Public Schools. One member, Ms. Collins, is, ironically, a defendant in this action.

While Mr. Beason maintains that there are articles he wrote in his file, Mr. Beason did not show that Mr. Thomas or Ms. Collins knew of those articles, and excessed or assigned him for writing those articles. Indeed, Mr. Thomas has stated that no one from the central administration office told him to excess Mr. Beason. No one in central administration ever told Ms. Collins how to assign Mr. Beason. (Supp. App. p. 131) Mr. Thomas never looked at Mr. Beason's personnel file, and neither did Ms. Collins. (Supp. App. pp. 111, 131)

Assuming Mr. Beason's expressions constitute protected free speech, Mr. Beason has no evidence to show they operated to cause his being excessed and placed on the day-to-day list. Respondents respectfully contend that

Mr. Beason showed no relationship between his being excessed at Custer and the subsequent assignment as a day-to-day teacher, and his expressions. Mr. Beason spoke on matters of concern to him, and possibly the general public. In at least one case Mr. Thomas complimented Mr. Beason for what he had to say. Other than disliking the fact he was excessed from Custer, Mr. Beason cannot recollect any acts of any of the defendants that demonstrate retaliation for his exercise of protected free speech.

The most telling point is, however, that two of Mr. Beason's four examples of free speech were published *after* he was excessed at Custer. Another he claims was published in *The Milwaukee Journal* but no record of it can be found by *The Milwaukee Journal.* One was purportedly sent to Dr. McMurrin and no claim even exists that Mr. Thomas or Ms. Collins even knew of it. In any event it is hardly accusatory of any kind of bad conduct on the part of the Milwaukee Public Schools.

In response to the motion for summary judgment, Mr. Beason filed the affidavit which appears at Supplemental Appendix pages 1 through 26. A review of those documents demonstrates that they are either documents already put into the record during the course of Mr. Beason's deposition (Supp. App. pp. 62-73); or were other newspaper articles and correspondence in which Mr. Beason was either quoted or which he wrote. Indeed, the first document attached to this affidavit is the same article which Mr. Beason identified during the course of his deposition and which was written after he was excessed from Custer High School in 1982. The second document attached to his affidavit was dated October 17, 1979 some two years and eight months

prior to the time that he was excessed from Custer High School. Mr. Beason provided no evidence that either Mr. Thomas or Ms. Collins knew of the article, or that they were in any way offended by the article and made personnel decisions regarding Mr. Beason because of it. Mr. Beason established no evidence that the article provided any basis for any personnel action taken regarding him. The third, fourth and fifth articles (Supp. App. pp. 8-12) are articles which appeared in the local presses regarding a transfer of Mr. Beason from North Division High School to Custer High School. That occurred in June, 1977. That occurred five years before Mr. Beason was excessed from Custer High School to day-to-day service, and eight years prior to the time that he commenced this action. Mr. Beason provided no evidence that Mr. Thomas who made the decision to excess Mr. Beason or Ms. Collins who was responsible for attempting to find a new regular assignment for Mr. Beason after he was excessed, even knew of the articles or were offended by them. Mr. Beason simply failed to establish any link between the existence of those articles and any personnel actions taken regarding him.

The sixth article attached to his affidavit (Supp. App. pp. 12-14) is an article written by Mr. Beason. It comments on a Congressional action and the manner by which blacks may gain more voter strength. It is not critical of his employer and it is not dated. It incorrectly refers to Mr. Beason as a "substitute" teacher. Mr. Beason has not been employed by the Board of School Directors as a substitute teacher, and has never been employed by the Board of School Directors as a substitute teacher. He is a regular teacher on day-to-day service. The seventh article appears to be dated January 12, 1969, 16 years before this action was commenced and 13 years before Mr. Beason

was excessed from Custer High School to day-to-day service. Again, no claim or evidence is made that Mr. Thomas or Ms. Collins even knew of the article or were in any way offended by it. The eighth article is undated. (Supp. App. pp. 15-17) It makes no critical remarks regarding Mr. Beason's employer and talks of a comparison of black and Jewish experiences in contemporary society. The ninth and tenth articles (Supp. App. pp. 18-21) are simply more copies of the December 9, 1983 article which was written *after* Mr. Beason was excessed from Custer High School to day-to-day service. The eleventh article is dated September 13, 1979 and raises some objections to a textbook in use in the schools. (Supp. App. pp. 21-23) The article was written three years before Mr. Beason was excessed from Custer High School and six years before this litigation was commenced. Again, no evidence was provided that Mr. Thomas or Ms. Collins knew of the article or were offended by the article. The twelfth article was a February 18, 1976 letter to Dr. McMurrin putting forth certain proposals for educational programs. (Supp. App. pp. 23-26) It is not critical of his employer, is mild in tone and is hardly objectionable. No evidence shows that Dr. Murrin was upset by the letter, or whether any personnel actions were taken on account of it.

Other than conclusionary allegations regarding Mr. Beason's "beliefs" that the documents which he wrote or in which he was quoted were objectionable to his employer and constituted a basis for some of the employment decisions taken regarding him, Mr. Beason provided not one shred of evidence that they were in fact related to any such items or motivated the action to excess him.

———o———

ARGUMENT

The question as phrased by the petitioner is clearly unsubstantial. Federal Rule of Civil Procedure 56 is straightforward. If the motion for summary judgment by the moving party is in the form as provided by the rule, it is the obligation of the moving party to demonstrate that there is no genuine issue as to any material fact, and that the moving party is entitled to a judgment as a matter of law. (Federal Rule of Civil Procedure, Rule 56(c)) When a motion for summary judgment is made and supported as set forth in the rule, the adverse party may not rest upon mere allegations or denials of its pleadings, but must in the response by affidavit or otherwise set forth specific facts proving the underlying elements of his case, and which he must prove to prevail. (Federal Rule of Civil Procedure 56(e)) *Celotex Corp. v. Catrett*, — U.S. —, 91 L.Ed.2d 265, 106 S.Ct. 2548 (1986). If the non-movant fails to provide facts providing the element of his case, summary judgment shall be entered against that party. (Federal Rule of Civil Procedure 56(e)) Nothing in the text or history of Federal Rule of Civil Procedure 56 suggests it should not apply to any particular type of action. This court has ordered that summary judgment is appropriate in civil rights cases involving First Amendment freedoms. *Board of Regents v. Roth*, 408 U.S. 564 (1972).

In the instant case, there can be no serious doubt that none of the material facts were challenged by the petitioner. While the petitioner maintains that he was the only black person employed in the social studies department of Custer High School, he never did challenge the fact and, indeed

agreed with the fact, that he was the least senior employe. The petitioner never did challenge, and indeed agreed with the fact, that some of the claimed constitutionally protected expressions of free speech which he uttered came after and not before the decision to excess him from Custer High School. Those that came before the decision to excess him from Custer High School, were made years before he was even assigned to Custer High School or was excessed. Others were private communications and either not published at all or were not sent to any of the officials who were responsible for making decisions either as to excessing Mr. Beason or to getting him a new assignment in another high school. Mr. Beason provided no evidence that any of his expressions motivated anything that happened to him.

The petitioner never challenged the fact and indeed agreed that when he complained about a high school which was inconvenient to him, he was given alternate assignments and, indeed, was given only certain high schools which were equipped for handicapped individuals.

Thus, there was no material or genuine issue of fact which could occupy the attention of the federal trial court. On facts such as these, whether or not the case involves an allegation of civil rights, summary judgment would have been appropriate.

There is little doubt among the circuits in the appropriateness of summary judgment in civil rights cases. *Cartagena v. Secretary of the Navy*, 618 F.2d 130 (1st Cir. 1980); *Hood v. New Jersey Department of Civil Service*, 680 F.2d 955 (3d Cir. 1982); *Lovelace v. Sherwin-Williams Co.*, 681 F.2d 230 (4th Cir. 1982); *Gordon v. Watson*, 622 F.2d 120 (5th Cir. 1980); *Ackerman v. Diamond Shamrock*

Corp., 670 F.2d 66 (6th Cir. 1982); *Huhn v. Koehring Company*, 718 F.2d 239 (7th Cir. 1983); *Steckl v. Motorola, Inc.*, 703 F.2d 392 (9th Cir. 1983); *Pace v. Southern Railway System*, 701 F.2d 1383 (11th Cir. 1983); *Metrocare v. Washington Metropolitan Area Transit Authority*, 679 F.2d 922 (D.C. Cir. 1982).

The mere fact that a case may also involve questions of constitutionally protected free speech, will not avoid a motion for summary judgment, where the results are inevitable. *Egger v. Phillips*, 710 F.2d 292 (1985); *Board of Regents v. Roth, supra.*

Mr. Beason raises the fact that a white teacher, one Ms. Claudia Roessel, was assigned to a teaching position, that he could not have held, but which she should not have held either. The employer noted that it did so as a mistake. (Supp. App. p. 111) Mr. Beason still has shown no facts that the assignment of Ms. Roessel was racially or unconstitutionally related to anything Mr. Beason said or wrote. As this court noted in *Bishop v. Wood*, 426 U.S. 341 (1976):

> The federal court is not the appropriate forum in which to review the multitude of personnel decisions that are made daily by public agencies. We must accept the harsh fact that numerous individual mistakes are inevitable in the day-to-day administration of our affairs. The United States Constitution cannot feasibly be construed to require federal judicial review for every such error. In the absence of any claim that the public employer was motivated by a desire to curtail or to penalize the exercise of an employee's constitutionally protected rights, we must presume that official action was regular, and if erroneous, can best be corrected in other ways. The Due Process Clause

> of the Fourteenth Amendment is not a guarantee against incorrect or, ill-advised personnel decisions.

Footnotes omitted, 426 U.S. at 349-501.

Nothing in Federal Rule of Civil Procedure 56 prevents the imposition of the summary judgment norm upon civil rights cases or First Amendment cases. Indeed, because of the plethora of such cases, it is an appropriate medium for weeding out those cases which are baseless and spurious in their entirety. Indeed, such is the very function of the summary judgment procedure. *Celotex Corp. v. Catrett, supra.* As observed by this court in that case, summary judgment disposition of these cases is not the watered down procedure, but is rather an integral part of the Federal Rules of Civil Procedure for the expeditious adjudication of such cases. The over-burdened federal judiciary is not the place for claimants, having no facts to support their claim, to have a trial and hope against impossible hope that lady luck will grant them an award. The federal courts are for those civil rights litigants, having evidence of their rights transgressed, to obtain the relief they so justly deserve. Mr. Beason has not shown he is in that category of litigants.

Mr. Beason would have this court believe the trial court surprised him when it granted the summary judgment motion. (Pet. p. 5) In fact, of course, the court entered a scheduling order on May 20, 1986 requiring dispositive motions by August 7, 1986. (Supp. App. pp. 134, 135) The defendants complied with that scheduling order.

———o———

CONCLUSION

For the foregoing reasons, the petition for certiorari should be denied.

Respectfully submitted this 18th day of December, 1987.

Respectfully submitted,

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

JAKE BEASON,

Plaintiff,

vs.

Civil Action

Case No.
85-C-0261

MILWAUKEE BOARD OF SCHOOL DIRECTORS OF THE CITY OF MILWAUKEE, et al.,

Defendants.

AFFIDAVIT IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

STATE OF WISCONSIN)
) ss
MILWAUKEE COUNTY)

JAKE BEASON, being first duly sworn on oath deposes and says:

1. I am the plaintiff in the above-captioned action.

2. I have reviewed my personnel file with the Milwaukee Public Schools and have found all of the letters and/or articles that I have written to the newspapers over the years to have been placed in my file. Many of these articles and letters are critical of the Milwaukee Public Schools and deal with school segregation and bussing [sic]. I have attached hereto and made a part hereof as exhibits some articles which are representative of those which have appeared in the newspapers and appear in my personnel file. In addition, I have made verbal charges over the years of racism in the Milwaukee Public School sys-

tem. I believe my views to be considered radical and viewed with hostility by officials of the Milwaukee Public School system.

3. In 1982 I was excessed from Custer High School because of an expected drop in enrollment. I was the only black teacher in the social studies department and believe that I was the most experienced teacher in the field of Afro-American history since I have an M.A. in black history. The student enrollment at Custer High School at that time was over 50% black. I was replaced by another teacher from North Division High School who had less seniority than I. There was clear precedent for the principal to retain me at Custer by having me teach Afro-American history and assign me to a study hall or cafeteria duty. The same year I substituted for a teacher at Custer who taught only four U.S. history classes and was assigned to cafeteria duty. That teacher had only approximately five years seniority.

4. The above circumstances reasonably compel the conclusion that I have been discriminated against because of my activism and political views as well as my race.

5. In 1977 I was excessed from North Division High School although I had more seniority in social studies than teachers who were not excessed. The starting date for my seniority was changed from September, 1967 to Janaury [sic] 23, 1986 [sic]. That readjustment caused me to have less seniority than Mr. Cerwinski who started a few days prior to my January 23, 1968 date.

6. I am making this Affidavit in Opposition to the Motion of the Defendants for Summary Judgment.

/s/ Jake P. Beason
Jake Beason

Subscribed and sworn to before me
this 2nd day of September, 1986.

/s/ Susan J. Locke
Notary Public, State of Wisconsin
My Commission expires 10-12-86.

By JAKE P. BEASON

12-9-83

At the risk of arousing the resentment of my employers, I will say that the Milwaukee Public Schools' court-ordered desegregation plan is racist and discriminatory.

The compelling reason for me to publicly make these charges is that the re-education of blacks and whites and a possible solution to the problems in education can begin only when we fully realize this central fact.

There is a historical reason for blacks complying with the court-ordered desegregation, while whites generally refused to do so. It is a characteristic of a people who have been without power for a long time. This powerlessness was brought on by our enslavement and subsequent oppression. In order to justify this exploitation, the white population has been brainwashed to believe that the only reason why the blacks continue to remain outcasts from the American way of life is because they are inferior.

We should go back to the open-enrollment policy because it has proved to be the most effective and honest policy used.

Prior to desegregation, black schools were inferior mainly because they received less of everything that was needed. When desegregation came, they gave us busing and they took the jobs and federal money.

Incidentally, desegregation is not integration, integration creates an open society where an individual has a multitude of opportunities for voluntary contact with other human beings, based only on personal taste, preference and ability. Desegregation, on the other hand, is the implementation of racial quotas.

Desegregation has not caused student achievement to improve. What it means is that the child is no longer the center of the controversy—desegregation is. The means have become the end. As it stands now, whether the student learns or not is not relevant to the educational policymakers. The human growth and development of the student are incidental.

Is a school bad merely because it is all-black? Is it good if it is all-white? Why aren't schools that are all-white called segregated schools? If so, what does this say to a black child?

Recently President Reagan honored an all-black high school in Chicago for its excellence.

The proper question is not whether there should be black separatism or integration, but how separatism long sustained by racial segregation and discrimination can be transformed so that black Americans, like other ethnic Americans, can get a fair share of American power.

Jake P. Beason is a teacher in Milwaukee Public schools.

[Illegible]

are biased, teacher says

10-17-79

By Jake P. Beason

I am a social studies teacher at Custer High School, and I am charging the Milwaukee Public Schools administration with racism in its adoption and use of textbooks —namely, "People and Our Country" used for the US history class at Custer High School.

This textbook gives the account of European explorers to America—Columbus, the Spanish, the Portuguese, the Vikings—and does not include the much earlier African explorers.

The African presence in ancient America is well- documented. Africans were trading with America long before Columbus; in fact, scientific evidence places them here in ancient times, before Christ. There also is evidence that the Chinese and Japanese were here in ancient America.

I contend that the authorities know about this scholarship. I personally have lectured teachers at the invitation of the social studies departments on this subject.

A great civilization

Further, it should be noted that the blacks were among the earliest builders of a great civilization of this planet, including the development of writing, science, engineering, medicine, architecture, religion and the fine arts.

The African accomplishments were structured out of the Western [Illegible]

The acceptance of white scholarly tradition has caused blacks to reject the slightest notion that they are a great people with a legitimate and noble past that extends in time to a point where what we now know as west European civilization was inconceivable.

To simply deny the existence of black Africans in pre-Columbian America and the overwhelming impact they had on civilization here is to guarantee a continuance of white superiority—and black inferiority-complexes.

Destructive weapon

How can black children feel that they are somebody when whites have taken the credit for doing practically everything in the world, and black accomplishments are neglected or distorted? It is clear that this kind of history being taught to our children has been as effective a weapon for the destruction of blacks' minds as white bullets, whips, and ropes have been for the destruction of black bodies.

There are few things more unforgivable than when men or women knowingly betray themselves. As a black man and a black teacher, I say that this attack on black minds must stop.

One thing is clear—the establish- [Illegible]

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by Sandra Matthews

Jake Beason, an American history teacher at North Division, has no intentions of resigning as a result of a transfer by the school administration for which he did not ask.

The school board transferred Beason for alleged charges resulting in a peer evaluation by the administra-

tion at North. Beason, who was not allowed to read the evaluation for himself, feels that he is being used as a "law and order" example for Black teachers, and even white teachers, who really want to see Black children learn about their heritage, by the kinds of charges ranging from "advocating anarchy and teaching hate" to insulting a white female visitor that Robert E. Bauer, administrative assistant in the department of administrative services, said was in Beason's file.

"I am not planning on resigning. I'm going to see this thing all the way through because I know that the outcome and the impact will set precedent on how, how much, and what will be taught to Black children to determine their future endeavors," Beason said.

FACIST REPRESSION

The Black community, he said, should be pretty fed up with having their resource leaders who are committed to their children transferred out to white schools so that the teachers cannot affect Black children with self-determination.

"This type of procedure is fascist repression, and Black people are going to have to recognize the procedure for what it is, and deal with it," demanded Beason. He said this same thing happened to Mrs. Bernice Rivers when she [illegible] to demonstrate for Black employment. Mrs. Rivers was transferred to Fritsche Jr. High as a result of her commitment to the demonstration. Mrs. Rivers, who is out of town, could not be reached for comment.

Beason said he didn't expect any help from the teachers, Black or white, at North even though this kind of

thing will probably happen to them, too, if they ever start to take an interest in the survival of [illegible].

GUILTY

However, Beason said, he is guilty if to stimulate Black children to thinking about why through the whole history of Black people living in America in terms of their contributions they (Black people) still have the worst equipped schools in this city.

Recognizing the fact that he was not told where he will be transferred might be an indication that the school administrators are hoping he resigns, Beason said. They will have to fire him even though it "will blight" his credentials.

"I can't start to worrying about job securit [sic] now because all that I've worked for would be lost forever. I'm teaching what I believe to be right and healthy for these children, and I can't allow myself to be intimidated by threat of loss of [illegible] and from doing the best job I know," [illegible] Beason.

Mrs. Sarah Scott, vice principal at North Division, said: "I would not like to make a comment right off the top of my head, and I have been very busy. Matter-of-fact too busy to give any thought to any conflicts. My role as the principal is to deal with the students primarily, and not the evaluations of the teachers which is primary [illegible] of the principal, Dr. [or Mr.] [illegible].

8-9

NORTH REMOVES BEASON

African History teacher Jake Beason was informed Monday that he was being transferred from his teaching post at North Division high school.

Beason said he was called to the school administration central office for a meeting with Robert E. Bauer and Grant Gordon, administrative assistants in the department of administrative services, where he was charged with "advocating anarchy and teaching hate, among other trumped up charges."

Beason said he was told the official reason for his transfer was a poor evaluation by the administrators of North. He was not allowed to read the file to which Baer [sic] referred during the meeting but was told it included charges of: excessive tardiness; leaving school without permission; advocating anarchy; insulting a white female visitor; teaching hate; being involved with students who petitioned for a new building and new equipment for North; and have a poor relationship with other members of the faculty.

Beason said dates and times of the alleged infractions were referred to often during the meeting.

"I don't understand how I got a satisfactory evaluation at the end of the last semester, if I was suspected of all those things," Beason commented.

At the time some of my students began the petition for a new building, Mrs. (Sarah) Scott North vice-principal came into the room and said she approved and sup-

ported it as long as it was legal. Beason denied all other charges.

He said Baer told of interviews with five other North teachers in gathering information about Beason.

Beason has been figuratively on the carpet before because he "moved too fast" toward making Black history a reality at North and because he was an outspoken critic of some school policies.

He has not yet been assigned to another school. He is completing the summer session at the University of Wisconsin-Milwaukee as a roving instructor and resource person in the school of education.

He plans to have the Milwaukee Teachers Education Association investigate his transfer and to seek legal advice.

"Whether I teach at North is not important, but arbitrarily removing Black teachers who are not afraid to support the things they know are right for Black students, is very important," Beason said.

Helen M. Brown, head of teacher personnel for the school administration, did not respond to Courier attempts to communicate with her Wednesday.

8-9

TEACHERS SUPPORT BEASON

The Milwaukee Black Teachers Caucus called for community action to protest the transfer of African History teacher Jake Beason from North Division.

The Black Teacher Caucus membership includes Black teachers from several predominately Black schools.

They asked Wednesday, "Why would a teacher who loves Black students, who teaches Black awareness, who is respected by the students' parents, who takes part in extra-curricular activities in school, who works hard with local parent groups, who feels that 'Blacks are beautiful people to associate with, who feels that Black people must be educated to know more about their ancestors, and who is willing to sacrifice himself to see that Black children receive a decent education be transferred from North?' [sic]

"Why is it that poor Blacks are robbed of people such as this?

"Are we going to sit back and let our children at North Division lose again?" the teachers asked the community? "Are we going to let some Negroes and whites set up a conspiracy against this man, and let our children lose another asset in their favor? What are we going to do?

"Why don't we use what has happened at North as a means to educate those Negro and white administrators to the point that they realize that this Black community will no longer tolerate them robbing our children of the opportunity to experience having a teacher such as Jake Beason."

Beason taught African History at North last year and in the past has taught Afro-American History and sociology.

CALL FOR ACTION

The teachers asked the community to "sign a petition, call other concerned people, write letters and get something going.' [sic]

Representatives of the group said they expect students, community groups and other teachers to join the protest against the "unfair manner in which Brother Beason was transferred."

[HEADING ILLEGIBLE]

campaign of candidate Orville Pitts.

Until this election, black voter turnout had been poor, despite voter registration drives. But the black electorate in Milwaukee cannot be understood outside of its historical context.

The majority of blacks in Milwaukee arrived after World War II. The black population in 1940 was 8,821. These blacks came mainly from the small towns and rural share-cropping areas of Mississippi, Arkansas and Tennessee. They came without any voting tradition or political experience as a result of blacks having been disfranchised in the South. This started with the Compromise of 1877 and the introduction of Jim Crow laws. During the Reconstruction Period after the Civil War, blacks went to the polls in droves. That this legacy of black voting ended is one of the dark chapters in American history.

During the 1940s there was a rapid growth in the old 6th Ward. Efforts to encourage blacks to vote for black representation failed.

Blacks have been unfairly accused of voter apathy. The truth is they have been under continuous pressure not to unite and gain success in the political arena. What happened in the 5th Congressional District with Orville Pitts should not have been a surprise.

The central illusion that plagues the black community and other urban cities is the belief that fundamental political power can be found within electoral politics. If this were so, we would see black advancement in cities with black mayors and congressmen: Detroit, Gary, Newark, Atlanta, Birmingham, New Orleans and Los Angeles. Interestingly, it has been said that when cities begin to die, they are turned over to the blacks.

What does this mean to the black electorate's hopes for political power? By unearthing the past, we can more clearly discern the historical terrain to reach a certain position, the rules are changed and our dreams and faith become a joke.

If the black electorate is to be taken seriously, its quest for political power must be translated into action and total involvement in the political process. If blacks aren't registered to vote, or those who are don't vote, how can they be effective in registering complaints and correcting conditions?

In addition to voting, blacks must be educated and informed if they are to make the best political decisions affecting their destiny. Blacks — nor any other ethnic group — can afford to stand back and say they "aren't involved and what's the use?".

In the American political system, organizations and interest groups hold power, not individuals. Power is measured by the number of elections political parties win, the number of public officials they elect and the amount of control they exercise over the administration of government.

BLACKS and others must understand that the name of the game is the number of votes you can get for your candidate or party, allowing them to pursue the community's interest. If our leaders fail to pursue our interest, there is no good reason to vote for them.

If blacks are to be taken seriously, they must become committed and develop organizational skills, along with political and philosophical ideas and goals, tied to honest and loyal leadership. Power is the name of the game in the political and world arena.

To play the game to win, one must be registered, properly (politically) educated, organized, well financed, and, most of all, loyal to the race. We cannot afford to be sold out.

Jake P. Beason is a substitute teacher in the Milwaukee Public Schools.

BLACK TEACHER KEEPS JOB

1/12/69 Journal

An attempt to transfer a North Division high school teacher who organizes his social studies courses in terms of black consciousness ended here last week after a meeting of school officials.

The teacher, Jake P. Beason, a Negro, was notified by letter that he would be retained. He teaches American and African history.

The school's principal, Lloyd Howell, also a Negro, confirmed that the question of transferring Beason was

considered after Howell himself had rated the teacher as "unsatisfactory" in a report.

Howell met with Asst. Supt. Alvin E. Westgaard and other school administrators after parent groups in the community had sent telegrams to administrators asking that Beason be retained.

Howell said Saturday that the incident was an administrative matter, which had been resolved. He declined to comment further.

Beason said he thought the issue involved was academic freedom, not black consciousness.

He said: "I'm not advocating separatism. I emphasize black consciousness in my classes because my students are black. The point is that any teacher who wants to take this approach and who is effective in his job should have the freedom to take the approach he thinks best."

He said officials had assured him that at no time was his competence as a teacher in question.

BLACKS MUST DIRECT EDUCATION OF CHILDREN

BY JAKE P. BEASON In My Opinion

First, I want to make it clear that I sympathize with Jews for their suffering and the systematic oppression they encountered in every land.

But it angers me when I see the American system generally respecting the Jews' right to advocate and work for

total unity of Jews everywhere and their continuous effort to remind their people and the world of their history and their suffering during the Holocaust, while steadfastly encouraging blacks to integrate and forget their history and their terrible suffering. This to me is a crime.

Elementary common sense dictates that the blacks, like the Jews, should develop a sense of racial awareness that can only be gained from a knowledge of our history. We should know that the blacks were among the very earliest builders of great civilizations, including the development of writing, sciences, engineering, medicine, architecture, religion and the fine arts. Now the white scholars know all of this, but it is generally unknown to most blacks.

A study of the general history of mankind reveals no people who have suffered so much in every area of life as blacks have. We lost over 100 million people during the slave trade. For every two million blacks enslaved, over a million died.

In the continuing crusade to control the minds of both blacks and whites through the sins of omission and commission of the American educational system, we find today that black pride and consciousness have largely been forgotten. Our children know little of what the race has suffered.

The best example of blotting out black history from our ukhools [sic] is the work of Mark Twain. Twain is recognized as America's greatest writer and humorist. In 1905 he wrote 'King Leopold's Soliloquy.'' This book was buried in silence for more than a half century. It was a story of the crime in the Congo, told with biting satire.

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All this bizarre story is a result of the Berlin Conference of 1884-'85. This was the birth of African colonialism, which was a collected effort by European powers to cut up and divide the entire continent of Africa for themselves. We must understand that apartheid is not a peculiarity of the South African government, but was African-wide under colonialism.

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Jake P. Beason is a teacher in the Milwaukee Public Schools.

IN MY OPINION

School-desegregation plan is racist policy

By JAKE P. BEASON

AT THE RISK of arousing the resentment of my employers, I will say that the Milwaukee Public Schools' court-ordered desegregation plan is racist and discriminatory.

The compelling reason for me to publicly make these charges is that the re-education of blacks and whites and a possible solution to the problems in education can begin only when we fully realize this central fact.

There is a historical reason for blacks complying with the court-ordered desegregation, while whites generally refused to do so. It is a characteristic of a people who have been without power for a long time. This powerlessness was brought on by our enslavement and subsequent oppression. In order to justify this exploitation, the white population has been brainwashed to believe that the only reason why the blacks continue to remain outcasts from the American way of life is because they are inferior.

We should go back to the open-enrollment policy because it has proved to be the most effective and honest policy used.

Prior to desegregation, black schools were inferior mainly because they received less of everything that was needed. When desegregation came, they gave us busing and they took the jobs and federal money.

Incidentally, desegregation is not integration. Integration creates an open society where an individual has a multitude of opportunities for voluntary contact with other

human beings, based only on personal taste, preference and ability. Desegregation, on the other hand, is the implementation of racial quotas.

Desegregation has not caused student achievement to improve. What it means is that the child is no longer the center of the controversy—desegregation is. The means have become the end. As it stand now, whether the student learns or not is not relevant to the educational policymakers. The human growth and development of the student are incidental.

Is a school bad merely because it is all-black? Is it good if it is all-white? Why aren't schools that are all-white called segregated schools? If so, what does this say to a black child?

Recently President Reagan honored an all-black high school in Chicago for its excellence.

The proper question is not whether there should be black separatism or integration, but how separatism long sustained by racial segregation and discrimination can be transformed so that black Americans, like other ethnic Americans, can get a fair share of American power.

Jake P. Beason is a teacher in Milwaukee Public Schools.

SCHOOL DESEGREGATION PLAN IS RACIST POLICY

At the risk of arousing the resentment of my employers, I will say that the Milwaukee Public Schools' court-ordered desegregation plan is racist and discriminatory.

The compelling reason for me to publicly make these charges is that the re-education of blacks and whites and a possible solution to the problems in education can begin only when we fully realize this central fact.

There is a historical reason for blacks complying with the court-ordered desegregation, while whites generally refused to do so. It is a characteristic of a people who have been without power for a long time. This powerlessness was brought on by our enslavement and subsequent oppression. In order to justify this exploitation, the white population has been brainwashed to believe that the only reason why the blacks continue to remain outcasts from the American way of life is because they are inferior.

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Recently President Regan [sic] honored an all-black high school in Chicago for its excellence.

The proper question is not whether there should

(Cont. on Page 5) . . .

September 13, 1979

Dear Mr.

I, Jake P. Beason, am a social studies teacher at Custer High School. I am charging the Milwaukee School Administration with racism in its adoption and use of textbooks. Namely, the book *People and our Country,* used for the U.S. history classes at Custer High School. This textbook gives the account of European explorers to America, i.e., Columbus, Spanish, Portugese, Vikings, etc., and does not include the much earlier African explorers.

The African presence in ancient America is well documented. Africans were trading and interacting with Native Americans way before Columbus, in fact, scientific evidence place their presence here in ancient times before Christ. There is also evidence that the Chinese and Japanese were here also in Ancient America. I contend that

the authorities know about this scholarship. I have personally given lectures to teachers at the invitation of the Social Studies Department on this subject.

Further, it should be noted that the Blacks were among the very earliest builders of a great civilization of this planet, including the development of writing, sciences, engineering, medicine, architecture, religion and the fine arts.

The African accomplishments were structured out of the Western historical literature by simply starting in history at the point wher [sic] Europeans wanted to start it—to the detriment of Blacks and others.

The acceptance of white scholarly tradition has caused Blacks to reject the slightest notion that they are a great people with a legitimate and noble past that extends, in time, to a point where what we now know as West European Civilization was inconceivable. To simply alter and deny the existence of Black Africans in Pre-Columbian America and their over-whelming [sic] impact on the civilization they found here is to guarantee a continuance of white superiority and black complexes. For indeed, how can black children feel that they are 'somebody' when whites have taken the credit for doing practically everything in the world, and black accomplishments are neglected or distorted. It is clear that this kind of history being taught to our children has been as effective a weapon for the destruction of Black minds as white bullets, whips, and ropes have been for the destruction of black bodies.

There are few things more unforgiveable than when men or women knowingly betray themselves. As a Black man and a Black teacher I say that this attack upon Black minds must stop.

One thing is very clear that the establishment of the primacy of a people's civilization is both a prerequisite to people's growth, development and sanity and a vital element of strategy in the politics of a people as they attempt to coexist with other people.

Sincerely,

/s/ Jake P. Beason
Jake P. Beason

Jake P. Beason
North Division
February 18, 1976

Dr. Lee R. McMurrin

Re: Preliminary proposal for Desegregation of Milwaukee Public Schools.

In response to Dr. Gronouski's statement that he want [sic] to look at all kinds of proposals, and that he is prepared to study any plan that [sic] brought before him relating to the desegregation of Milwaukee Public Schools, I am submitting this preliminary proposal as a viable instrument toward aleviating [sic] some of the present and potential ills in the Milwaukee School System.

I am proposing that a Black Studies/African-Asian Studies Institute in one of the inner-city high schools be developed. Preferably at North Division since it could easily be initiated with the projected New North to open in September of 1977.

This Black Studies/African-Asian Institute would be in line with the proposal by Dr. McMurrin for a specialized "Magnet" school system.

The institute would not only explore all phases of Afro-American life, but would direct its attention to the continent [sic] of Africa and Asia. One of the goals of the institute would be to prepare students to move into the college ranks better prepared. It would give students the basic foundation to enter the fields [sic] political science, science, medicine, and international Relations [sic]. It would include the African and Asian languages as well, and could conceivably be so "good" that *it would attract serious and conscientious students from throughout the city.*

This most certainly can be viewed as a "big" proposal, but it requires big men and women with big ideas and dreams to do the things that will be necessary to launch us on our way to the Twenty First [sic] Century.

At present only the affluent private schools have remotely addressed itself [sic] to preparing their students for international leadership roles. I feel that the present school system does not have programs that meet these standards. The present economic climate suggests that foreign countries could offer employment for young men and women who are properly prepared. I feel that the masses, the common ordinary people, both white and minority must play a major role in the future of this country.

I feel that the effort to integrate the Milwaukee public schools cannot realistically be accomplished if it is done without the knowledge that there exist and will continue to exist a significant number of black people who have a

[Writing Illegible] strong feeling for black pride and Black identity and have Black Power as a priority for the black community. They may see integration as a scheme to eradicate those feelings. If integration is to be successful, [sic] it cannot come without addressing itself to the Black man's drive for power.

There has been misunderstanding among both whites and blacks as to what Black Power is or should be. Black power has nothing to do with hate or disliking whites. It has been necessary for those who teach Black History to reinterpret the history of this country; consequently, past generations of white power structurescould [sic] not be portrayed as benevolent or just toward the black race because of the legacy of slavery and the restoration of black slavery in America in the last quarter of the nineteenth century. The truth had to be told.

Black power is no different, or should not be, from Jewish, Polish, Italian, or any other form of white power. A Black Studies program would deal with the whole spectrum of history, a.i., [sic] political, economical, social, past and present that would attept [sic] to chart a course for the future that would make the black community a viable community. One that would help develop the black community where it would have resources and talents that would encourage whites to want to come into the community.

Integration will never be a reality as long as areas of the city is [sic] properous [sic], independent and viable, and the black community is poor, dependent and not viable.

I am a social studies teacher at North Division. I tech [sic] Urban Studies and World History and I have taught Afro-American history seven years in the Milwaukee public schools. I have a M.A. in Inner-City Studies [sic] (Afri-

can history sequence) from Northeastern Illinois University and I have traveled extensively throughoutAfrica [sic] and Asia and parts of Europe. I am a disabled Korean Veteran. My experience and academic background has [sic] prepared me to direct or assist in helping to establish the kind of program that I have proposed. If there are others better qualified; [sic] I will negate my own interests, for my concern is not for any personal rewards or advancement, but to see that the very best is done for the black community.

If this proposal is considered, it would obviously would [sic] require more work and planning. This is a preliminary proposal.

Sincerely yours,

/s/ Jale P. Beason [sic]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

JAKE BEASON,

Plaintiff,

vs.

Civil Action
No. 85-C-261

THE BOARD OF SCHOOL
DIRECTORS OF THE
CITY OF MILWAUKEE, et al,

Defendants.

AFFIDAVIT IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT AND DISMISSAL
AND ALTERNATIVE MOTION IN LIMINE

STATE OF WISCONSIN)
MILWAUKEE COUNTY)

COMES NOW PAUL E. KRITZER, being first duly sworn and upon his oath who deposes and says as follows:

1. Affiant is employed as the Secretary and General Counsel of Newspapers, Inc., publisher of The Milwaukee Journal and The Milwaukee Sentinel. Affiant makes this affidavit upon a review of records and files of The Milwaukee Journal and The Milwaukee Sentinel kept in the regular and ordinary conduct of business of said institutions.

2. Affiant has had an opportunity to research two articles written by Mr. Jake P. Beason which are annexed respectively as "Exhibit 1" and "Exhibit 2". From the records and files of The Milwaukee Journal and The Milwaukee Sentinel, affiant is able to discern that "Exhibit

1'' ran on December 9, 1983 and ''Exhibit 2'' ran on July 12, 1985.

3. Affiant has checked the records and files available to him to see if a letter was ever published written by Jake Beason in the Milwaukee Journal following September 13, 1979 through the end of September, 1979. Affiant has found no such letters.

FURTHER AFFIANT SAITH NOT.

/s/ Paul E. Kritzer
Paul E. Kritzer

Subscribed and sworn to before me
this 5th day of August, 1986.

/s/ Bruce D. Schrimpf
Notary Public, State of Wisconsin

My Commission: is permanent

BDS:cfs
8/4/86

EXHIBIT 1
In my opinion

School-desegregation plan is racist policy

By JAKE P. BEASON

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The proper question is not whether there should be black separatism or integration, but how separatism long sustained by racial segregation and discrimination can be transformed so that black Americans, like other ethnic Americans, can get a fair share of American power.

Jake P. Beason is a teacher in Milwaukee Public Schools.

EXHIBIT 2

In my opinion

Blacks must direct education of children

By JAKE P. BEASON

FIRST I want to make it clear that I sympathize with Jews for their suffering and the systematic oppression they encountered in every land.

But it angers me when I see the American system generally respecting the Jews' right to advocate and work for total unity of Jews everywhere and their continuous effort to remind their people and the world of their history and their suffering during the Holocaust, while steadfastly encouraging blacks to integrate and forget their history and their terrible suffering. This to me is a crime.

Elementary common sense dictates that the blacks, like the Jews, should develop a sense of racial awareness that can only be gained from a knowledge of our history. We should know that the blacks were among the very earliest builders of great civilizations, including the development of writing, sciences, engineering, medicine, architecture, religion and the fine arts. Now the white scholars know all of this, but it is generally unknown to most blacks.

A study of the general history of mankind reveals no people who have suffered so much in every area of life as blacks have. We lost over 100 million people during the slave trade. For every two million blacks enslaved, over a million died.

In the continuing crusade to control the minds of both blacks and whites through the sins of omission and commission of the American educational system, we find today that black pride and consciousness have largely been forgotten. Our children know little of what the race has suffered.

The best example of blotting out black history from our ukhools [sic] is the work of Mark Twain. Twain, is recognized as America's greatest writer and humorist. In 1905 he wrote "King Leopold's Soliloquy." This book was buried in silence for more than a half century. It was a story of the crime in the Congo, told with biting satire.

Twain ties the crimes of the robber monarch, King Leopold, who ruled Belguim, to the robber barons who rule Twain's own country, the United States. Leopold permitted a few Americans to buy into his Congo business:

Messrs J.P. Morgan, John D. Rockefeller, Thomas Fortune Ryan and Daniel Guggenheim. Their money has been tied to the Congo's (Zaire's) business ever since.

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THE helpless people of the Congo were brutally robbed and multilated [sic] (hands and feet of Congolese men, women and children cut off indiscriminately). Colonialism decimated the population from 25 million to 10 million.

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

JAKE BEASON,

Plaintiff,

v.

MILWAUKEE BOARD OF SCHOOL DIRECTORS, et al.,

Defendants.

AFFIDAVIT OF COUNSEL IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT, DISMISSAL AND ALTERNATIVE MOTION IN LIMINE

Civil Action
No. 85-C-261

STATE OF WISCONSIN)
MILWAUKEE COUNTY)

COMES NOW BRUCE D. SCHRIMPF, being first duly sworn upon his oath, who deposes and states as follows:

1. Affiant is duly licensed to practice law in all courts of the State of Wisconsin. Affiant is employed in the Office of Grant F. Langley, City Attorney. Affiant is employed in the capacity of Assistant City Attorney. As part of his regular and ordinary job duties, affiant has been assigned the defense of the above-captioned matter.

2. Annexed hereto and incorporated herein by reference as Exhibit Nos. 1 through 29 are true and correct copies of pages 7, 9, 10, 13, 17, 18, 20, 27, 28, 29, 30, 31, 32, 35, 39, 42, 50, 51, 52, 53, 54, 55, 56, 57, 76, 80, 81, 89 and 90 of Volume I of the deposition of Jake P. Beason taken on May 19, 1986. Annexed hereto and incorporated herein by

reference as Exhibit Nos. 30 through 34 are true and correct copies of Exhibit Nos. 1 through 5, respectively, of the exhibits to Volume I of the deposition of Jake P. Beason taken on May 19, 1986.

3. Annexed hereto and incorporated herein by reference as Exhibits Nos. 35 through 57, respectively, are pages 26, 27, 32, 37, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 63, 64, 70, 71, 72, 73, 75, 88 and 106 of Volume II of the deposition of Jake P. Beason taken on June 9, 1986. Annexed hereto and incorporated herein by reference as Exhibit Nos. 58 through 60, respectively, are Exhibits Nos. 1, 2 and 3 to Volume II of the deposition of Jake P. Beason taken on June 9, 1986.

4. Filed herewith is the original and true and a true and complete copy of the deposition of Donald Ernest taken on July 8, 1986, with all exhibits.

5. Affiant is the individual who regularly and ordinarily handles matters which are filed as charges of discrimination pursuant to Title VII of the 1964 Civil Rights Act, 42 U.S.C. § 2000e *et seq.*, and the Wisconsin Fair Employment Act, § 111.31 *et seq.*, *Wisconsin Statutes* (1983-84) for the City of Milwaukee and the Board of School Directors of the City of Milwaukee. Affiant knows of his own knowledge that Mr. Beason at no time ever filed charges of discrimination under those statutes respecting the claims he brings to this court.

Further affiant sayeth naught.

/s/ Bruce D. Schrimpf
BRUCE D. SCHRIMPF

Subscribed and sworn to before me
this 7th day of Aug., 1986.

/s/ Laura M. Bergner
Notary Public, State of Wisconsin

My Commission: expires 8/31/86
BDS:pml
8/7/86

EXHIBIT 1

(p. 7) College I think, if I'm not mistaken.

Q What was your degree from that college?

A Business Administration. BBA in Business Administration.

Q Continue. The next one was?

A BS in Education at UWM and a Master's Degree from Northeastern Illinois University in '75—Northeastern, 1975.

Q What was the Master's in?

A In Black Studies and Minority Studies.

Q Since that time have you done any other studies—taken any other courses somewhere, maybe not for a degree but—

A Some courses in Chicago at Roosevelt University and at Northeastern Seminars and so forth and related to Black and Minority Studies.

Q These courses didn't lead to any additional degree, though?

A No.

Q Are you licensed to teach?

A Yes.

Q And in what states?

A Wisconsin.

Q What is your licensure? Do you know the number?

A 725715, if I'm not mistaken. It's History and Sociology.

EXHIBIT 2

(p. 9) Q So you don't take any continuing education or anything like that?

A No.

Q Okay. Have you taken any additional courses or done anything to try to obtain additional certification?

A No, not that I can recall, not towards certification.

Q To your knowledge, what's the procedure for obtaining a particular sort of teaching certification? What do you have to do?

A What did I have to do? The courses that I took in the School of Education prepared me for my license to teach, which I'm a history major, and those are the courses primarily that I've taught since the years that I've been in the system.

Q So you say you had to take certain courses to get those licenses; is that correct?

A Yes.

Q To whom did you apply to get the license?

A I assume it was in Madison. I'm a little hazy in terms of procedures going back because all of that was done—it was 19 years—in 1967 the first year and as I recall after receiving my contract and being appointed at North Division, I was sent from Madison—from Madison they sent me a license with those—specifying those particular numbers.

EXHIBIT 3

(p. 10) Within the last oh, maybe five, six, seven years now there have been some changes in some of the courses that I'm not certified to teach now from the Board's standpoint. I had taught those courses and they didn't make that distinction. If you were a Social Studies teacher, you might teach any of the courses like one in particular that there was a conflict at Custer the last school that I was assigned to, Geography, I taught Geography a number of different semesters in the System but after roughly somewhere between '77 and '80, there was a change in terms that you had to be certified to teach certain courses like say in the Social Studies you had to have a license. Some teachers have. I don't know if that's a 700 that covers the whole span of Social Studies and so you're free to teach any of these courses.

Q Are you saying that in the past at some point you did teach geography; is that correct?

A Yes, I've taught just about all of the courses in Social Studies at one time or another.

Q But then apparently at some point someone changed the requirements?

A From Madison, yes.

Q So it wasn't someone from Milwaukee Public Schools

EXHIBIT 4

(p. 13) A Yes, first started at North Division '67 to '69 and then one year at Lincoln, '69 to '70. I was out a year and that must have been '71 as when I was reinstated I went to Parkman and I stayed at Parkman to '74. I went on sabbatical. I had seven years in by that time. I was eligible for sabbatical. I took sabbatical and went to Northeastern Illinois University a year and received my Master's, then I returned back to North Division in '75 and from '75 to '77 I was at North. I was excessed from North and went to Custer in 1977 to '81 or '82 when I was excessed from Custer. The last four years from '82 to '86 or '81 to '85 until the present time I've been on day-to-day substitute teaching.

Q Okay. Do you recall before you went on day-to-day service what subjects you taught as a regular teacher over the years?

A I was teaching Afro-American History and World History.

Q World History?

A World History at Custer.

Q So you're talking about your time at Custer?

A You're talking about the last—

Q Let's start with Custer. At Custer you taught Afro-American History?

EXHIBIT 5

(p. 17) of years seniority to be excessed and other teachers with much less seniority be retained in the school.

Q You say that they told you the reason was declining enrollment. Who told you that?

A That would be the principal at that time at North was Mr. Jazzner (phonetic) and I received the notice during the summer after the semester was over in '77, yes, and I was informed like around August— the 1st of August so that I would be excessed. I guess maybe they told me. I don't know if they told me where I would be—if they told me later or before school began. I was told that I was assigned to Custer.

Q You say he told you the reason was declining enrollment but you're not sure. Do you have any reason to believe it's something else?

A I feel that there's other reasons, yes. For one thing, is that I was—I had good evaluations. There was nothing wrong with my evaluations while I was at North during those years. I had a good evaluation. I was one of the teachers in the Social Studies Department because that's my department with most seniority. It could not have been on credentials. At the time I was the only teacher with the Master's in the Social Studies Department

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EXHIBIT 6

(p. 18) at North. There were two teachers that was retained and I had no question about that because I felt as though that was legitimate. They were head coaches. There were some other things where there were a couple of teachers that were—had less seniority than I who were still teaching and they retained who was not involved in any extracurricular activities.

Q Do you know what their licenses were? Were they the same as yours?

A I couldn't say what their license was but we were all teaching the same courses.

Q What course was that?

A U.S. History.

Q Do you happen to recall their name?

A Swerinski and Dice and Otis Dice.

Q You did say earlier though, didn't you, that a principal may have some legitimate reasons for excessing someone?

A He may feel they're legitimate, yes, like a teacher might have forensics.

Q Would you agree that in certain situations that would be proper for a principal to do?

A Yes, if it exists, yes. I don't think those elements existed when I was excessed. I don't think they existed when I was excessed from Custer.

EXHIBIT 7

(p. 20) A The Union filed a complaint and I also, if I recall, I retained a lawyer but it was denied evidently, whatever the motion was. I'm not trying to be as close as I can.

Q Did you file a grievance?

A I think I filed a grievance or something to the effect in writing that I protested against being excessed, that the reasons were not just.

Q And did you talk to a Union representative about it?

A Don Ernst, if I recall correctly.

Q Do you recall what he told you?

A That there was nothing that he could do, that legally that they could excess me.

Q So he said the excessing was proper?

A That's what he said.

Q And the Union you're talking about, that's the MTEA?

A The MTEA.

Q So this never went to an arbitration?

A No.

Q You say you hired a lawyer. Did you ever file a lawsuit over that incident?

A I didn't file a lawsuit, no. I engaged a lawyer, Frank Holton.

Q You're physically disabled; is that correct?

EXHIBIT 8

(p. 27) The majority of teachers do have one classroom but there are always some teachers who are floating in situations where you have a large number of students which there was over 2,000—roughly about twenty-three, twenty-four hundred students in those early years when I was there.

Q Apparently you at some time did get your own classroom; is that correct?

A Yes, that was after—through an attorney—Attorney Holton I used was the attorney and he wrote a letter to Dr. Graham, explained the situation and then 'Dr. Graham directed Mr. Thomas to see that I was furnished my own classroom.

Q And when did that occur then?

A That would be in—like maybe March or April of '78.

Q And after that had happened and you received your single classroom, were you satisfied with those arrangements?

A The arrangements were, as far as the classrooms were okay, yes.

Q So did you feel that you no longer had a problem with your handicap within that building getting around?

A No. No, no, I didn't have any problem once—then I had no problems.

Q Okay. Do you drive, Mr. Beason?

EXHIBIT 9

(p. 28) A Yes.

Q What sort of vehicle?

A Now?

Q Yes.

A I have a van and a regular passenger car but I drive the van mostly which has the lift so I'm able to go in and out without any assistance.

Q How long have you been using this sort of a van?

A The van, just last year I purchased the van. Before that I had a car with—what is it called? A wheelchair top or something where—like I push a button and it goes up and folds and sits on top of a car. When I want to get out, I open the door, hit the button and it comes unfolded and I take the wheelchair and get in the wheelchair and that was the equipment that I had—that I was able to go in and out without any assistance.

Q In both the car and your van, you're able to do it by yourself?

A Yes.

Q And how long did you use that sort of a car?

A I've used hand controls quite a number of years. I've used that since roughly about 1980 or so. I was at Custer. I used that when I found out it was available. That particular equipment hasn't

EXHIBIT 10

(p. 29) been on the market a long time otherwise I probably would have had it like when I first went to Custer where I was using the wheelchair. As I said, prior to that I wasn't using the wheelchair. I found out—I think approximately around 1980 or so that they had the wheelchair carrier. That's the correct name, I think, wheelchair carrier that is mounted on top of the car and the individual is able to operate it independently.

Q How long did it take for you to—when you're using the car with the wheelchair carrier, how long does it take to get into the driver's seat once you're at the car?

A A couple minutes.

Q A couple minutes you say?

A I mean, I'm just guessing. No long—I just drive up, open the door and transfer from the wheelchair to the car and then hook underneath the folding seat like the wheelchair and it folds up. This is a collapsible wheelchair and it folds up and goes up on top of the car.

Q So is it fairly simple for you to get in and out of this sort of car?

A Sure, very simple.

Q Is that true with the van? Is that simple to use?

(p. 30) A The van is simple, yes, it's simple. It's even more simpler. It gives the handicapped person more independence.

Q Are these sorts of vehicles comfortable for you to ride in?

A Sure.

Q Do you drive regularly?

A Yes.

Q So when you were working—before you were on sick leave, were you driving regularly to work?

A Yes.

Q Do you also drive say to the grocery store, to visit friends, that sort of thing?

A Sure. My only-est problem is not with the driving or getting in and out of the car. The problem comes and existed as far as a problem in those years since I've used a wheelchair, is when the weather's bad—when it snows, many times if there's ice, sometimes if the snow and ice isn't cleared, I might—would have some assistance over the snow or over the ice, it would be difficult rolling over the ice and so forth.

After about the first or--after the first or second year I was at Custer, they had two spots there for the handicapped parking with the sign up.

EXHIBIT 12

(p. 31) Maybe that was happening in all the schools.

Prior to that I don't remember that they had them in many of the schools because there wasn't that many

and at Custer there was another teacher—a German—a foreign language teacher that was also a handicapped person. He and I both parked close to the door so it was a relatively short distance from where we were parked to get into the building.

Q And were these spots at Custer regularly cleared out of snow and ice so you were able to get in?

A Usually but sometimes there were problems if it wasn't taken care of like if the snow—with the heavy snow it wouldn't be like say on a Monday or something, you have trouble if you have a big snow over the weekend and some days—sometimes it may not be cleared. I would still be able to get in the building usually but usually students—everyone knew me and so usually students would give me a hand in getting over that short distance to the door. Once I got to the door, there wasn't any problem.

Q Were those circumstances unusual where there was a buildup of snow due to a blizzard over the weekend or something?

A I'm just saying that obviously over the years many times because we have severe winters and then from

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EXHIBIT 13

(p. 32) time to time I'm not saying that's an everyday occurrence but when the weather's real bad like January, December—January or February, that may occur.

I don't know if that's out of line. I don't want to get too far. My real problem really comes—which may be

part of my suit, is that since I've been day-to-day the last four years, I'm subbing on day-to-day, it really becomes a problem simply because you never know what school—usually the way it works, each day—each morning the sub office calls the teachers like myself—the other teachers also on a day-to-day at what school. Occasionally you may have assignments where a teacher is ill and they may be out and they will tell you cover this class for two or three days. Usually never over three days, if I recall covering, but usually every day I would be informed what school I'm going to and so the receiving school, no one or the office really doesn't know who I am or whether I'm coming, they just know that a teacher is out, that's why teachers have to call and say whether they're going to be absent so they wouldn't know if I'm coming or anyone is coming and that became a hardship because that really ran into problems there and when I've been

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EXHIBIT 14

(p. 35) not from me but of Black students in 1967 which probably started at Rufus King and North Division.

This was happening not only in Milwaukee but throughout the country. They did not have—they did not offer any courses until that time. Most courses came out of those protests of the community and studies. I happened to be assigned at North at that time—at that particular time and I was one of the teachers in Social Studies who had some background in those areas and so that's why I was chosen to teach and volunteered to teach because there

wasn't that many teachers that were anxious to necessarily teach it.

They did not have any courses at the university that were not courses offered generally in most the University of Wisconsin or other schools in those areas.

Q So when you say you prepared a program of Black Studies, this was one in conjunction with a number of other people?

A Yes, but I wrote the outline for the course as that time it then began to spread in all of the schools so then they had to have teachers in the Social Studies Department requested me. They didn't make me. They requested that I assist some of the

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EXHIBIT 15

(p. 39) like this, do you recall any times when someone in the School System then responded to you in some way, either negatively or reacted in some way to what you had said?

A Yes, I recall. There were letters in my file to the effect from North Division that I was more or less labeled a militant and a Black militant, something to that effect, and that it might cause problems when I first went to Lincoln.

Q Do you recall who wrote those letters?

A Yes, the principal at Lincoln at the time. I know his name but right offhand—he was the principal when I was there in '69 and I do not—he's deceased at the time.

Q Do you recall anyone else saying something to you about your activity—anyone from the School System?

A Not to me personally. I had heard of it and would also note that there were memos in my file of different activities that I was involved in that might be related to the question to me speaking out at different panels—as the panelist. Also, most of the articles that I've written and many of them have been critical of the School System, I admit, those articles where someone I would have no way of knowing had kept a file on—of all of that and that's in my file in the

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EXHIBIT 16

(p. 42) the question of building a new North but that came out of the classes that I was teaching.

Q What evidence do you have that the reason you were no longer coaching was because of your involvement in the Black Studies and all that kind of thing?

A I don't know if this is the correct answer. I mean, not correct answer but the proper answer is that at that time I had about two years in the System and there was an effort to transfer me from North and perhaps to terminate me.

My feeling was and my understanding is that you're on probation for the first three years before you gain tenure and so the year—the third year I left North and went to Lincoln.

They were aware that if I was not terminated, then it would be some difficulty, you have to go through the

Board and all of that. They had no problem in terminating me, although I fought it and then it went through the School Board trial and so forth and I won a favorable decision and was reinstated but if that was not done before you have tenure, then there are certain guidelines that they have to go through in order to terminate a teacher unless they have charges.

There were no charges of misconduct, malthesens (phonet.)

EXHIBIT 17

(p. 50) school.

Q Okay. Let me see those, please. Okay. This is specifically what you were asked to bring. "Any and all documents, written and/or distributed by the Deponent"—that is you—"which Deponent claims involved his exercise of First Amendment rights and which Deponent claims were the basis in whole or in part of Defendant's retaliation against Deponent."

A Here it is. There were other articles but those were mostly about the most specific ones that were dealing directly where I made reference to the school.

Q Do you mind if I have these originals marked?

(Exhibit Nos. 1 and 2, marked for identification.)

MS BICKERT:

Q The first document that you gave me looks like—it's marked as Exhibit 1 and it looks like a newspaper clipping entitled "Blacks must direct education of chil-

dren'' by Jake P. Beason. Do you happen to recall what date this was—this article?

A I don't recall the exact date.

Q Would you have to look at it?

A I might have to look at it. This is '85. Last year.

Q That was an article from 1985?

MR. SCHRIMPF: Just for the Court Reporter,

EXHIBIT 18

(p. 51) could we ask that the originals of the documents be bound in the original transcription, that you make copies of them and bind them right into the copies of the transcripts?

THE REPORTER: Yes.

THE WITNESS: I think I have one here that might be pertinent because it had specific criticisms of the textbook that was used. Here's one. It's a copy that was in the newspaper. That's one in '79. The date is there. That was in the newspaper while I was at Custer.

MS BICKERT:

Q This one that you gave me here, ''School desegregation plan is racist policy.'' It says ''Continued on page five.'' Do you have the continuation?

A No, I don't. I was looking for it and I'm certain that I can find the other part but I don't have it with me now. That's almost the entire article. There may be another paragraph that I have.

(Exhibit Nos. 3 and 4, marked for identification.)

MS BICKERT:

Q Okay. The document that's been marked as Exhibit 2 is entitled "In My Opinion" and "School desegregation plan is racist policy by Jake P. Beason." Do you

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EXHIBIT 19

(p. 52) happen to recall the date of this article?

A That would be December, about three years ago. What is this? '86? This would be about three years ago in December, '83. I think it could be—I'm almost certain it was December of '83.

Q Do you recall what newspaper this was published in?

A The Journal.

Q The Milwaukee Journal?

A Yes.

Q And the Exhibit No. 1, do you know what paper that was in?

A I think most of them was in the Journal, if I'm not mistaken.

Q Okay. The document that's been marked as Exhibit 3, is an original—a newspaper print entitled "School desegregation plan is racist policy." Do you remember what paper this was in? It doesn't appear to be the Journal?

A No, that may be Community Journal. The Black newspaper. The Milwaukee Community Journal, I think.

Q Do you recall the date of that one?

A All I can think that it might be in the early Eighties. I'm really not certain but it would be related to the desegregation and I guess that was 1976, I guess is when that was—when that was passed.

EXHIBIT 20

(p. 53) Q Are you talking about the original desegregation decision?

A The original suit. I can't remember exactly what year. I most likely responded to something and usually when I'm writing, I'm usually not just writing to be writing, I'm usually responding to something that may be occurring in the School System of the City.

Q The fourth document, Exhibit 4, is a letter dated September 13, 1979 from you to an unidentified person. I think you said this was published somewhere?

A Yeah, I usually type it up and then I keep a copy and that was in the Journal roughly—that may have been the date that I was typing it shortly.

Q So it was like a letter to the editor?

A Yes.

Q So you've given me four documents in response to the request. Are there any other documents which you

claim involved the exercise of your First Amendment rights and which you claim were in some way the basis for retaliation against you by the School System? Are there any other documents?

A I don't have in my possession right now—there were other articles that I've written but they were not always involving the school. My involvement as an activist perhaps would be dealing with the whole scope

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EXHIBIT 21

(p. 54) of the Black community, not necessarily the education. See, I may have one where I may have been dealing with one that was in the paper but, I mean, that just might be in terms of—well, here's two.

Q Well, the ones I'm interested in are the ones that you say formed some basis for the School System retaliating against you.

A Well, here's one here but I think would be very different but I think that that might—would be not necessarily—well, I could say retaliation in a subtle type of way. This was February 18th, 1976, a "Preliminary proposal for desegregation of Milwaukee Public Schools."

At that time Dr. Gronouski, I guess who was the Johnson's cabinet or Carter's cabinet was appointed to be mediator of whatever in the desegregation suit and we made a request for employee's teachers to be a part of suggestions and so forth in terms relating to the desegregation suit that came out in '76 and I felt at the time when I looked around and there were comments and statements

from different people but I didn't see anything coming from Black teachers and so I wrote that particular article —or not article but letter to McMurrin because that was stated it was a request for any teacher to make suggestions

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EXHIBIT 22

(p. 55) and plans.

I felt as though there should be some plan from Black teachers and I wasn't aware of anyone. I hadn't read any so I said someone should do something so I wrote that particular lettter enforcing my views requesting that a Black Studies—an Afro/Asian Studies Institute would be inaugerated at North.

I suggested North because it was a new building, was being erected and it was my feeling that generally speaking most people that are involved in international affairs are usually coming from the newest schools—prep schools, et cetera and I felt as though that students—and it wasn't directed to Black or White students, students from the mass should be involved in dealing with the cultures, the language which is not sufficient. I have a problem which is in terms of criticism that only European languages are being taught generally in public schools. This is true throughout the country historically and I know there is a course out at Vincent and Riverside—one course, Japanese I think, Chinese—there's a Chinese teacher but as a general rule, there has not been any foreign languages taught other than European languages.

At that time I felt as though there should be more studies done preparing young students, high

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EXHIBIT 23

(p. 56) school students towards the future not only for employment but being involved in the Middle East which it may have been not as proper in terms of all the problems—in terms of the Middle East that I felt had not been dealt with properly but those persons—individuals who were involved in working in various agencies and so forth throughout the—I was stating right there on record—that letter there, that there should be the student prepared and learning the culture, the language and so forth which included not only Africa but Arabic, Middle East, et cetera.

Q Let me ask you this: Did you receive any sort of response from Dr. McMurrin regarding this proposal?

A Yes, that it was received, that they received the letter and it was a nice letter that they received and they thanked me for submitting the proposal.

Q Did you ever talk to him personally about this?

A Nothing ever happened, no, but I just wanted to go on record that I had made a proposal.

(Exhibit No. 5, marked for identification.)

MS BICKERT:

Q This is the February 18, 1976 letter that we've just been discussing?

A Yes.

EXHIBIT 24

(p. 57) Q Are there any other documents which you believe were the basis of some sort of retaliation against you for your exercising your First Amendment rights?

A I can't think of any right now that would not be repetitive, you know.

Q So these are the only documents then that you believe form the basis of some sort of retaliation against you; is that correct, by the School System?

A Right. In retaliation, there probably would be some clarification. It is my feeling that whether they would come under the area of tradition or racism, I don't know. My feeling is that basically there's been covert effort, maybe overt even to suppress anything from Black leaders of people in advocating a proposal for things.

Many times I've seen things that have come out that Blacks have suggested and later on it's come from the Journal, wider community, and it seems that if, in fact, nothing is coming from the Blacks themselves in terms of suggesting things that would be in the best interest of the school, then it gives a negative impression.

That's in terms of retaliation and I'm referring that it works as a retaliation in terms of suppressing anything positive coming from Blacks.

EXHIBIT 25

(p. 76) necessary. I mean, those things, if they're continually happening with all of this stress and strain of teaching and all of the problems, that can become to a point where it can be on the verge of harassment.

Q Getting back to your speaking out—your exercising your First Amendment rights, we talked about Mr.

Thomas. In what ways did the other Defendants retaliate against you for speaking out? What makes you think that they were retaliating against you? Was there something in particular that they said to you that they did to you?

A I cannot say that I can recall of anything. You're talking about the School Board, Superintendent and so forth?

Q The School Board. The Superintendent. Ed Neudauer.

A No, I can't say that I've had any direct—other than the School Board, that goes back obviously that when —when I was terminated and I felt as though that they had never forgotten that situation, that I couldn't recall of any teacher that went through that procedure and not just Milwaukee. With anyone else. I'm not the only-est teacher. There were teachers around the country who had spoken out, lost their jobs and I spoke out against it.

Q Did you come up with any evidence you'd have that

EXHIBIT 26

(p. 80) that you initiated say back in the late Sixties, early Seventies that you had going on?

A And I continued those all as long as I was teaching. I attempted to do that.

Q You're not talking about the Black Studies class that was actually taught in the school?

A No, not necessarily that, no.

Q That wasn't eliminated?

A No, the class wasn't eliminated. I was at different times—I wasn't teaching it anymore. There was less emphasis placed on those students. In fact, when we had departmental meetings, there was discussion among some of the staff in the department of whether the course was even justified and my position was that most certainly that it was because the true history and everything was most certainly included in the traditional book and yet there was already precedent set because you have courses that are offered like British authors and so forth, which I see nothing wrong with, but there is most certainly concentration in other areas than other ethnic groups and I feel that the Blacks should have that concentration too.

Q Would you agree that ever since the Black Studies Program in the late Sixties that the Milwaukee

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EXHIBIT 27

(p. 81) Public Schools have continued to offer that program?

A They've offered it and that's basically about it. They've offered but they have not—there are so many things that they have not done in terms of materials.

In addition to text books, in my estimation, the textbooks were poor quality, inferior in terms of the textbooks. There are many books that are available that I would say —that would be better than the textbooks that I have used.

In fact, the book—and I can't right offhand recall the title, but the same book that was—has been used in

high school right up until recently was the same book that I was using in middle school. They were using the same book. I thought that it was at a low level, like fifth, sixth grade level perhaps and it was like preconceived that the Black students are not capable of handling reading material and so forth at the high school level or at a level that I think would warrant that the books that were used were at a low level.

I'm well aware that you may have a class structure but in terms of for a whole school, no, I don't think that the students necessarily or that

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EXHIBIT 28

(p. 89) A No. No. That conversation didn't come up. I was still being excessed and after the second year and the third year of being excessed, I guess that's when I may have—maybe had conversation with Ms Collins about getting a regular assignment.

Q Okay. Well, in your Complaint you say that she told you that you'd have to take some additional courses and obtain certification before you'd be allowed to teach other Social Study courses. Do you recall in particular what certification she was suggesting that you get?

A I would assume this 700 license that sometime an assignment might open up in an additional school and that particular program or that teacher may have one or two courses or one course and in say, like in some cases, some teachers may have usually two but sometimes three preparations. That means three different courses. If one of

those courses—that if I pick up that teacher's program and one of those courses is in a course that I'm not certified for, then legally I'm not supposed to be there.

Q You say that she suggested that you might get—you should get a 700 license?

A My understanding is from my conversation with Ms Collins is that if I had widened my certification,

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EXHIBIT 29

(p. 90) which would be more extensive, I would be able to get an assignment—be assigned more quickly that way. That's my understanding from her.

Q So you understand a 700 license would allow you to teach more different subjects?

A Yes, that's all of my conversation. She wasn't telling me what to do. She was giving me options.

Q Apparently you decided though not to go ahead and get a 700; is that correct?

A Right, because then that would give them more reasons for me not to teach the courses that I feel as though I'm well qualified to teach and am best qualified to teach.

Q But would you agree with a 700 license you would probably more quickly be removed from the day-to-day list and placed in a regular assignment?

A Yes, but I'm looking at education different than just for a job. I mean, I'm looking in terms of exercising

my expertise—my abilities to the best of my ability and in the best position and I feel other than education in any kind of business,—and I don't want to get off into a long rhetoric or anything but no business would operate that way.

Q But you wanted, in particular, to teach one subject; isn't that correct? The Black Studies?

EXHIBIT 30

BLACKS MUST DIRECT EDUCATION OF CHILDREN

By JAKE P. BEASON

IN MY OPINION

FIRST, I want to make it clear that I sympathize with Jews for their suffering and the systematic oppression they encountered in every land.

But it angers me when I see the American system generally respecting the Jews' right to advocate and work for total unity of Jews everywhere and their continuous effort to remind their people and the world of their history and their suffering during the Holocaust, while steadfastly encouraging blacks to integrate and forget their history and their terrible suffering. This to me is a crime.

Elementary common sense dictates that the blacks, like the Jews, should develop a sense of racial awareness that can only be gained from a knowledge of our history. We should know that the blacks were among the very earliest builders of great civilizations, including the development of writing, sciences, engineering, medicine, architecture, religion and the fine arts. Now the white

scholars know all of this, but it is generally unknown to most blacks.

A study of the general history of mankind reveals no people who have suffered so much in every area of life as blacks have. We lost over 100 million people during the slave trade. For every two million blacks enslaved, over a million died.

In the continuing crusade to control the minds of both blacks and whites through the sins of omission and commission of the American educational system, we find today that black pride and consciousness have largely been forgotten. Our children know little of what the race has suffered.

The best example of blotting out black history from our ukhools [sic] is the work of Mark Twain. Twain is recognized as America's greatest writer and humorist. In 1905 he wrote "King Leopold's Soliloquy." This book was buried in silence for more than a half century. It was a story of the crime in the Congo, told with biting satire.

Twain ties the crimes of the robber monarch, King Leopold, who ruled Belguim, to the robber barons who rule Twain's own country, the United States. Leopold permitted a few Americans to buy into his Congo business: Messrs J.P. Morgan, John D. Rockefeller, Thomas Fortune Ryan and Daniel Guggenheim. Their money has been tied to the Congo's (Zaire's) business ever since.

All this bizarre story is a result of the Berlin Conference of 1884-'85. This was the birth of African colonialism, which was a collected effort by European powers to cut up and divide the entire continent of Africa for

themselves. We must understand that apartheid is not a peculiarity of the South African government, but was African-wide under colonialism.

THE helpless people of the Congo were brutally robbed and multilated [sic] (hands and feet of Congolese men, women and children cut off indiscriminately). Colonialism decimated the population from 25 million to 10 million.

Mark Twain's political writings have largely been "forgotten"; that is why "King Leopold's Soliloquy" isn't contained in any edition of his works. This is only one of the many omissions that have helped to mis-educate the American public, and thoroughly confuse most blacks. Our problem is a very difficult one. Common sense ought to dictate that we take priority in educating our own children.

Jake P. Beason is a teacher in the Milwaukee Public Schools.

EXHIBIT 31

SCHOOL-DESEGREGATION PLAN IS RACIST POLICY

By Jake P. Beason

AT THE RISK of arousing the resentment of my employers, I will say that the Milwaukee Public Schools' court-ordered desegregation plan is racist and discriminatory.

The compelling reason for me to publicly make these charges is that the re-education of blacks and whites and a possible solution to the problems in education can begin only when we fully realize this central fact.

There is a historical reason for blacks complying with the court-ordered desegregation, while whites generally refused to do so. It is a characteristic of a people who have been without power for a long time. This powerlessness was brought on by our enslavement and subsequent oppression. In order to justify this exploitation, the white population has been brainwashed to believe that the only reason why the blacks continue to remain outcasts from the American way of life is because they are inferior.

We should go back to the open-enrollment policy because it has proved to be the most effective and honest policy used.

Prior to desegregation, black schools were inferior mainly because they received less of everything that was needed. When desegregation came, they gave us busing and they took the jobs and federal money.

Incidentially, desegregation is not integration. Integration creates an open society where an individual has a multitude of opportunities for voluntary contact with other human beings, based only on personal taste, preference and ability. Desegregation, on the other hand, is the implementation of racial quotas.

Desegregation has not caused student achievement to improve. What it means is that the child is no longer the center of the controversy—desegregation is. The means have become the end. As it stands now, whether the student learns or not is not relevant to the educational policymakers. The human growth and development of the student are incidental.

Is a school bad merely because it is all-black? Is it good if it is all-white? Why aren't schools that are all-

white called segregated schools? If so, what does this say to a black child?

Recently President Reagan honored an all-black high school in Chicago for its excellence.

The proper question is not whether there should be black separatism or integregation, but how separatism long sustained by racial segregation and discrimination can be transformed so that black Americans, like other ethnic Americans, can get a fair share of American power.

Jake P. Beason is a teacher in Milwaukee Public Schools.

EXHIBIT 32

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Recently President Regan [sic] honored an all-black high school in Chicago for its excellence.

The proper question is not whether there should (Cont. on Page 5) . . .

EXHIBIT 33

September 13, 1979

Dear Mr.

I, Jake P. Beason, am a social studies teacher at Custer High School. I am charging the Milwaukee School Administration with racism in its adoption and use of textbooks. Namely, the book *People and our Country,* used for the U.S. history classes at Custer High School. This textbook gives the account of European explorers to America, i.e., Columbus, Spanish, Portuguese, Vikings, etc., and does not include the much earlier African explorers.

The African presence in ancient America is well documented. Africans were trading and interacting with Native Americans way before Columbus, in fact, scientific evidence place their presence here in ancient times before Christ. There is also evidence that the Chinese and Japanese were here also in Ancient America. I contend that the authorities know about this scholarship. I have personally given lectures to teachers at the invitation of the Social Studies Department on this subject.

Further, it should be noted that the Blacks were among the very earliest builders of a great civilization of this planet, including the development of writing, sciences, engineering, medicine, architecture, religion and the fine arts.

The African accomplishments were structured out of the Western historical literature by simply starting its

history at the point wher [sic] Europeans wanted to start it—to the detriment of Blacks and others.

[Writing Illegible]

The acceptance of white scholarly tradition has carried Blacks to reject the slightest notion that they are a great people with a legitimate and noble past that extends, in time, to a point where what we now know as West European Civilization was inconceivable. To simply alter and deny the existence of Black Africans in Pre-Columbian America and their over-whelming [sic] impact on the civilization they found here is to guarantee a continuance of white superiority and black superiority complexes. For indeed, how can black children feel that they are "somebody" when whites have taken the credit for doing practically everything in the world, and black accomplishments are neglected or distorted. It is clear that this kind of history being taught to our children has been as effective a weapon for the destruction of Black minds as white bullets, whips, and ropes have been for the destruction of black bodies.

There are few things more unforgiveable than when men or women knowingly betray themselves. As a Black man and a Black teacher I say that this attack upon Black minds must stop.

One thing is very clear that the establishment of the primacy of a people's civilization is both a prerequisite to people's growth, development and sanity and a vital element of strategy in the politics of a people as they attempt to coexist with other people.

Sincerely,

/s/ Jake P. Beason
Jake P. Beason

EXHIBIT 34

Jake P. Beason
North Division
February 18, 1976

Dr. Lee R. McMurrin

Re: Preliminary proposal for Desegregation of Milwaukee Public Schools.

In response to Dr. Gronouski's statement that he want [sic] to look at all kinds of proposals, and that he is prepared to study any plan that [sic] brought before him relating to the desegregation of Milwaukee Public Schools, I am submitting this preliminary proposal as a viable instrument toward aleviating [sic] some of the present and potential ills in the Milwaukee School System.

I am proposing that a Black Studies/African-Asian Studies Institute in one of the inner-city high schools be developed. Preferably at North Division since it could easily be initiated with the projected New North to open in September of 1977.

This Black Studies/African-Asian Institute would be in line with the proposal by Dr. McMurrin for a specialized "Magnet" school system.

The institute would not only explore all phases of Afro-American life, but would direct its attention to the continent [sic] of Africa and Asia. One of the goals of the

institute would be to prepare students to move into the college ranks better prepared. It would give students the basic foundation to enter the fields [sic] political science, science, medicine, and international Relations [sic]. It would include the African and Asian languages as well, and could conceivably be so "good" that *it would attract serious and conscientious students from throughout the city.*

This most certainly can be viewed as a "big" proposal, but it requires big men and women with big ideas and dreams to do the things that will be necessary to launch us on our way to the Twenty [sic] First Century.

At present only the affluent private schools have remotely addressed itself [sic] to preparing their students for international leadership roles. I feel that the present school system does not have programs that meet these standards. The present economic climate suggests that foreign countries could offer a [sic] employment for young men and women who are properly prepared. I feel that the masses, the common ordinary people, both white and minority must play a major role in the future of this country.

I feel that the effort to integrate the Milwaukee public schools cannot realistically be accomplished if it is done without the knowledge that there exist and will continue to exist a significant number of black people who have a strong feeling for black pride and Black identity and have Black Power as a priority for the black community. They may see integration as a scheme to eradicate those feelings. If integration is to be successful, it cannot come without addressing itself to the Black man's drive for power.

There has been misunderstanding among both whites and blacks as to what Black Power is or should be. Black power has nothing to do with hate or disliking whites. It has been necessary for those who teach Black History to reinterpret the history of this country; consequently, past generations of white power structures could not be portrayed as benevolent or just toward the black race because of the legacy of slavery and the restoration of black slavery in America in the last quarter of the nineteenth century. The truth had to be told.

Black power is no different, or should not be, from Jewish, Polish, Italian, or any other form of white power. A Black Studies program would deal with the whole spectrum of history, a.i., [sic] political, economical, social, past and present that would attempt to chart a course for the future that would make the black community a viable community. One that would help develop the black community where it would have resources and talents that would encourage whites to want to come into the community.

Integration will never be a reality as long as areas of the city is [sic] prosperous, independent and viable, and the black community is poor, dependent and not viable.

I am a social studies teacher at North Division. I tech [sic] Uurban [sic] Studies and World History and I have taught Afro-American history seven years in the Milwaukee public schools. I have a [sic] M.A. in Inner-City Studies (African history sequence) from Northeastern Illinois University and I have traveled extensively throughout Africa and Asia and parts of Europe. I am a disabled Korean Veteran. My experiences and academic background has [sic] prepared me to direct or assist in helping to estab-

lish the kind of program that I have proposed. If there are others better qualified; [sic] I will negate my own interests, for my concern is not for any personal rewards or advancement, but to see that the very best is done for the black community.

If this proposal is considered, it would obviously would [sic] require more work and planning. This is a preliminary proposal.

Sincerely yours,

Jake P. Beason

EXHIBIT 35

(p. 26) A No, no.

Q These are things that other people wrote?

A Yes, when I viewed my file which every teacher has a right upon request to view your file.

Q Could I have the documents back, please? Thank you. Now, as far as these five documents go, do you have any direct knowledge that Mr. Thomas ever saw any of these documents?

A The only direct knowledge that I have, and I couldn't say which article, that following he indicated to me I read your article in the paper—

Q So—

A —I mean, you know, I'm—not each one, but I can recall on one or two occasions of articles that was in the paper—

Q Okay.

A —he had responded to me that he had read the article.

Q I believe you indicated last time that Mr. Thomas actually complimented you on the articles that he had read, is that correct?

A Yes, the writing. Yes.

Q Do you think Mr. Thomas would have used those articles as a basis to discriminate against you at all?

A I don't know.

Q Okay. Apparently he had very positive things to say

EXHIBIT 36

(p. 27) about them, didn't he?

A Sometimes he said positive things and the mutual, negative, I mean, those articles were not directed to Mr. Thomas, it was the school system. I never attacked any individual in those articles. It was more or less dealing with the system.

Q Now, Mr. Thomas never said anything negative about these articles, did he?

A Not to me, no.

Q Now, Exhibit No. 4 was—marked last time as Exhibit No. 4, is a letter dated September 13, 1977 signed by you. It's a typewritten letter and it says, "Dear Mr." and then there's a blank. Do you happen to recall who, if anyone, it was sent to?

A Doctor McMurrin, if, if I'm not mistaken.

Q Would you like to look at it?

A This was a proposal, I assume. Oh. No. This was an article, '79, I see the date, that I had written and submitted to the *Journal.* I was teaching US history at the time, the book *People in our Country* was the textbook, and out of discussions in class and so forth I would bring up things that I thought was necessary where in the textbook they started right off with Columbus, the discovery of America, et cetera, and I brought in other factors of the African presence in

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EXHIBIT 37

(p. 32) had at least a course or some courses in black studies?

A They should have. This is one of the reasons why that I criticized. I thought it—it's either—It may not necessarily always have to come under the heading of racism, but it most certainly is poor planning to be able to—I don't thing [sic] any industry or anyone else would set their workers in that kind of situation, in areas that they are unfamiliar with, in a situation where I had been training in this area, in the courses offered. I should have been teaching the course. I wasn't angry with the teachers or anything like that. They had nothing to do with it.

Q Do you, do you know what's the certification requirements for courses taught in Milwaukee public schools?

A I was under the impression it was from Madison, the superintendent of the education department, whatever.

Q Would you agree that Milwaukee Public Schools does not—is not the body which establishes certification requirements for teachers?

A I would agree that that's possible. I really don't know all of the facts. I do believe that the Milwaukee School Board or school administration has a responsibility to students to lobby towards making whatever kind of changes that's in the best interests of students. My feeling all during this time is, where I may have been

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EXHIBIT 38

(p. 37) black studies that are teaching, I know of several people who are in administration that may have had advanced study in black studies, but as far as teaching, there may be some and there's quite a number of teachers, but I didn't know of any other than one other person and he's not teaching, I felt as though—that if I was granted the sabbatical, developed the expertise and then at the same time—At different times Mr. Rump—Doctor Rump who's the head of the Social Studies Department for the school system had used me or requested my expertise at different times. I've been invited to speak and given lectures, slides, et cetera, in this area at other schools by the—not on my own parts, but I cooperated with my superiors at the School Board, namely Doctor Rump earlier. Even those teachers, as I pointed out, who were perhaps fine teachers, I have no criticism of them, but had no experience teaching black history at all, I was asked to give

those teachers whatever help that I could share, whatever materials and things which I did and on any number of occasions and I think Doctor Rump could verify that. So, I was requested to, to do that at different times. When the federal authorities—A lot of money evidently was pouring into the city around that time and they wanted to see how

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EXHIBIT 39

(p. 51) out. I found out the building, that there was no entrance that I would be able to get into.

Q Are there any buildings which you consider convenient?

A Yes.

Q What buildings?

A Custer was convenient from the physical standpoint, physically-accessible, King I had no problem with, Riverside, I could handle Riverside. The only problem with some of the schools, the elevators would be on the blink and then I would run into problems many times at Riverside and sometime at King because the elevators weren't working.

Q That's kind of an occasional problem?

A Yeah. Sometimes it was more than occasional. Sometimes they'd be down for weeks and I had to go the roundabout way to try to get into the classroom. One of the other ones that I had problems with that I simply refused to take the assignment and that was Bay View.

Q What was the problem with Bay View?

A The parking lot where I had to park was like about a block from the school and it was downhill and I had made up my mind I was not going to try to push a wheelchair up the hill on slippery snow and ice in the wintertime to get to the new addition and then through that to the old building to go upstairs to go

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EXHIBIT 40

(p. 52) up to the office. It would have been very taxing and time-consuming of trying to do it. I really was unfamiliar with Bay View the way it's laid out. But, the parking lot for teachers is down the hill approximately—a good block from the school.

Q Have you ever told anyone from the administration that you had this problem with Bay View specifically?

A Yes, I did, because they sent me there and I called back and told them that I couldn't handle it and to send me somewhere else.

Q Who did you tell that to?

A I called the sub office.

Q And when was this, do you recall the year and the dates?

A Pretty sure it was last year and they sent me again once this year, I've been sick most of this year. Last year I was sent there only once or twice, I was sent there once, and I didn't—and then they sent me again, they

must have slipped and they sent me again. Then I told them I couldn't handle Bay View and then they switched and found another school.

Q So, after you complained they stopped sending you to Bay View?

A Yes.

Q Have you ever spoken to Ken Hitzke about your problems

EXHIBIT 41

(p. 53) at some of the school buildings?

A I recall speaking to Mr. Hitzke, whether it was about school problems or not, I'm not certain. I recall—I know Mr. Hitzke. I recall speaking to him on several occasions. Exactly if it was—It's possible that I did because I think he took over for Doctor Graham or one of the other administrators who had resigned or left and he was temporarily handling the Human Resources, if I recollect correctly.

MS. BICKERT: Could I have these two things marked please?

(Whereupon, documents were marked for identification by the Court Reporter as Exhibit Nos. 1 and 2, respectively.)

Q (BY MS. BICKERT:) I'll show you what's been marked as Exhibit 1. Can you identify that for me, please? Would you agree that's a letter from Ken Hitzke to you dated February 6, 1984?

A I think I recall this letter. Yes. What was the question again that you asked?

Q First of all, would you agree that's a letter from Ken Hitzke to you dated February—

A Yes.

Q Okay.

A Uh-huh.

EXHIBIT 42

(p. 54) Q Do you recall getting a copy of that letter?

A I think so, yes.

Q Now, after receiving this letter—Okay. Apparently this letter indicates that you will only be assigned to certain schools with handicapped facilities, is that correct?

A Yes.

Q And after receiving this letter were you only assigned to these schools?

A On this list, yes. I don't recall, I don't recall being assigned to any other than these schools here, Vincent, North a few times, South Division, yeah.

Q Would you agree that all of those schools are fully handicapped-equipped?

A The ones that I have been in here. I have been to Custer, I have not been to Juneau or Lincoln Vocational Center, I have been to North, I haven't been to Pleasant View, South, Vincent, Riverside and Walker, that's the

school on 31st and—32nd and—Walker, whatever the street that's there, those are the schools that I have—that I've been in on day-to-day. They have Bay View here and I have not been in Bay View. I assume that it's adequate. It wasn't the school, it was where I, where I had to park. I was driving and I had to try to wheel my wheelchair up a hill and

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EXHIBIT 43

(p. 55) that was over snow and so forth, even though it was shoveled.

Q I believe that you testified that after you complained about that they stopped sending you there?

A Right.

Q Of the schools that are on that list, would you agree that they are handicapped-equipped?

A I would, I would say so. I had a lot of problems at Walker.

Q What sort of problems did you have at Walker?

A The problems I had at Walker is that hardly anyone would be—everyone's around another part of the building and it's locked and the only way I could get in was on the elevator and at the service entrance there and the engineer had to open the door, and a lot of the other schools that I have attended, Hamilton and others I have attended, there's always someone there. All I have to do is get someone to answer the door and tell me where the office is and I go and report.

Q So, at all of the other schools there was no problem getting in, but at Walker you had a problem getting in the building, is that correct?

A Right.

Q Did you ever mention this problem at Walker to anyone

EXHIBIT 44

(p. 56) in the administration or a dispatcher?

A I mentioned it to the secretary or the principal that I had problems and I had tried to point out, because I was there, what happened is in—Many times these schools, I would arrive on time or at least within a reasonable time according to when I would be notified, but by the time I'd get into the building, class might—sometimes classes may have already started because I'd have to wait until someone opened the door.

Q Did you ever mention—Now, you see at the bottom of that letter, Mr. Hitzke asked you to call him if you have any questions. Did you ever call Mr. Hitzke with any questions or complaints about the situation at Walker?

A I don't recall whether I did or not. I recall talking with, with the sub office and on some occasions I requested them to notify the school that I was arriving so they would have someone to open the door, especially in the wintertime when I was running into problems. Some of the other cases—A student, it didn't make any difference, as long as I got into the building. But, no one—students couldn't give me any assistance or either teachers,

no one really—the engineer really had access to come down the elevator and get me in the

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EXHIBIT 45

(p. 57) door.

Q When you asked the dispatcher to do that for you, did that then take care of the problem?

A Sometimes it did, but—Now, like it may have taken care of the problem then, but it may be the following month, that could have easily been forgotten and I could have gone and the same thing may have occurred again. It's not like—I may be at Walker this month, it may be another month before I would be assigned to Walker.

Q In that situation wouldn't you agree that you could then again ask the dispatcher to contact the school?

A Sure, I guess I could. Yes.

Q Could I have the letter, please? Thank you. Okay. I'll show you a copy of Exhibit 2 which is a letter dated December 6, 1984 to you from Ken Hitzke. Again, have you—did you receive a copy of this letter?

A Yes, I'm sure I did.

Q Okay. Now, apparently—Would you agree that letter gives you a list of schools to which you will be assigned, a limited list of schools?

A Yes.

Q Okay. Do you recall or do you know why your school assignments were changed between—from the letter dated February 6, 1984 to the letter dated December

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EXHIBIT 46

(p. 58) 6, 1984?

A No, I do not.

Q Do you recall making any complaints or requests or anything like that in between those two letters which would—

A Possibly so. There's one example, like Vincent is a relatively new school which has no problem; they have facilities and everything. But, from the parking lot going up, if I'm assigned there after a heavy snow, the plows come and they shovel and perhaps do an adequate job for someone who's walking, but the wheelchair would slip and slide and I'd have all kinds of problems to try to do which is roughly a good block from here to the school and it's on an incline upward and I'm trying to maneuver the wheelchair over that, where normally the school itself is adequate, it's a brand-new school practically, no problem. But, in inclement weather it can become the problem.

Q Now, you were assigned to—Vincent was one of the schools that was listed in the February 6, 1984 letter?

A Yes.

Q After receiving that February 6th letter did you make any complaint about Vincent and the problem—

A I may not have made any complaint until the sit-

uation arrived because I would not know where I'm going or

EXHIBIT 47

(p. 59) how the—what's going to be on—These things would just come up; you wake up in the morning and you've got a heavy snow.

Q Well, would you agree that the school system or the individual school wouldn't know there was a problem either until you would complain?

A Right. I understand that. I did not hold the school, you know, responsible for that situation.

Q Okay. After you realized there was a problem at Vincent do you recall making a complaint to anyone in the administration?

A Not right offhand, I can't recollect.

Q Okay. As far as the other schools on that list in the December 6th letter, did you have any problems as far as accessibility to any of these schools on the list?

A No, I don't think. On this list, no. They were—As I say, other than Bay View I had no, no problem of getting in the buildings as long as I was able to—the door was open or someone would open the door. I couldn't walk in. Using this, I had no problem getting in. As I say, sometimes the—like the past year, the elevator was down for like two months at Riverside and I had to go way around to the back and use the old service entrance and things and sometimes

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EXHIBIT 48

(p. 60) there are two elevators. But, they knew about it, so I dealt with it the best I could.

Q Since receiving this letter on December 6th of 1984 or on or about that time have you been assigned to any schools other than those on this list?

A I don't think so. I don't think. I think mainly—The schools, Vincent, Riverside, Walker and King probably.

Q And you testified that you since that time have not had a problem with these schools, is that correct?

A Right. I've only worked two or three weeks this year, so I haven't had any problem.

Q Okay. "This year" meaning 1986 or—

A 1986.

Q Okay. What about during 1985?

A At different times I, I, I can't say specifically, at different times I may have had problems in getting in the building because I had to have someone open the door, I think, and in the fall I was sent to, or was it this year, Webster, is that on Green Tree, Webster Middle School?

Q I'm not sure.

A Yeah, I think. I was sent—There was nothing wrong with the school, but there would be some problems because I couldn't get in until I would find someone.

EXHIBIT 49

(p. 63) Q Okay.

A Yes.

Q Are there ever any days on which you are not asked to report?

A No.

Q So, you're asked to report every single day?

A That's in the contract, if my understanding is correct.

Q So then, you receive the same benefits and the same pay as a regular teacher, is that correct?

A Yes.

Q And you work every day?

A Yes, unless I call in ill.

Q And you have regular sick leave like a regular teacher, right?

A Yes.

Q Okay. So, would you agree that as a day-to-day you can expect to have an assignment every single working day?

A Yes.

Q Do you anticipate that you will be called every day so that you get up at the same time every morning and get ready for work as if you were going to be going to work?

A Yes.

Q Now, sometimes you work in long-term assignments, is

EXHIBIT 50

(p. 64) that correct?

A I have. I've never been in any real extensive, but I have had as much as three days. I don't recall ever having any over three days, although sometimes some sub teacher may be ill for an extended period of time. But, have not—I don't recall having any over three days.

Q Okay. In those instances where you're in a long-term assignment meaning more than one day, then you aren't called each morning, are you?

A No, no. I already know where I'm supposed to be the next day. Then there's no problem.

Q Uh-huh. How does, how does the assignment process for your day-to-day service work, who calls you, when do they usually call, that sort of thing?

A The sub office calls me, they may call anywhere from shortly after 6:00 to 7:00 o'clock and sometime later. There's sometime, for whatever reason, they simply forget. Sometimes I'll have had to call to find out where I am supposed to go and I would be waiting and sometimes they're waiting to see if there's something open, a few teachers are being absent or whatever, I imagine—I assume it might be the reason, and there have been occasions that they simply—I assume an honest, innocent—overlooked and forget to call me

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EXHIBIT 51

(p. 70) late for work?

A Sure, most certainly. If I'm late, they dock me. I was docked—Whenever the principal or secretary who kept time, if I came in over whatever was deemed reasonable or minor, I was docked.

Q Okay. When you're late there are also students sitting in a classroom without a teacher, is that correct?

A Sure. Uh-huh.

Q Isn't it true that on occasion you have been up to an hour late?

A Of getting in the school, not an hour of, of, of arriving at school. I have been, sure, I've seen times where I have been, a number of schools, not necessarily a number, but specifically I know Walker, not that I was an hour—I was there, I was waiting; I couldn't get in the building. I was waiting. I wasn't gong to stand out in ten to fifteen below zero and—standing there trying to, trying to get I [sic] there. There were undoubtedly problems in having a handicap and I've tried not to use that as an excuse, but my whole question of the whole thing was why I was even being put on day-to-day. That becomes a problem.

Q You mentioned that you recall an instance at Walker

EXHIBIT 52

(p. 71) where you might have been an hour late because—

A An hour late getting into the building. I was at school, but I'm not going to stand out in—

Q When was that?

A I do not—It has happened the past winter and last year it has happened at least or it happened this past winter, I was there this past year, if I'm not—In fact, I'm quite sure. In January I worked, I worked two or three weeks.

Q In your complaint you say that the defendants have reduced your salary by docking wages for minor tardiness where teachers not physically-impaired have not had their wages docked for tardiness.

A That was the one instance that I knew of where I knew I was docked. Moneywise it wasn't that much for me to get excited about except I thought that it was unfair if I was being docked and teachers coming in at the same time or after me was not docked. When I found that out, and I wasn't going around questioning every teacher, it just happened that on one particular instance I had a conversation afterwards with the teacher that I was aware that came in after I did and I asked was he docked and he said he was not docked—

Q Who was that teacher?

EXHIBIT 53

(p. 72) A I would have to go back and recollect the teacher. I just remember the incident and the teacher was a sub.

Q Do you recall what school?

A Custer.

Q Was that while you were on day-to-day service?

A Yes.

Q Okay. Do you recall the dates that you have been docked for pay or do you have any record of that?

A No.

Q Okay. Would you agree that since you've been on day-to-day service you've frequently been late to work?

A I have been late some, but I, I don't know the number of times.

Q Would you agree it was frequent?

A No. I wouldn't say it was frequent, no.

Q Do you happen to recall the number of times you were absent in the '82-'83 school year?

A No.

Q If I told you—I'm sorry, not absent, late or tardy.

A No, I don't know.

Q If I told you eight times would that sound correct?

A It might be.

Q Do you consider that few?

EXHIBIT 54

(p. 73) A I haven't thought of it in terms of that because there are other factors, and, and having a handicap and I'm not using that as an excuse, but I've learned to accept certain kinds of things. There have been times when I have been late. I have been there. I have been at different schools and I simply had to knock on the door and wait. Just like I've been at Riverside quite a number of times and the teachers go straight up through the door. I have to go around to the side and I have to wait and pound on the door sometimes hoping that I get someone to come to open the door. Other times when I would get—I would be there I would have to wait for the elevator, the elevator may not work when I would get there, all of those things, and I—it's just nerve-wracking to try to go in and document each and every situation of which I'm, you know, aware of, whether I'm going to run into any of those things. Some days it runs smooth, other days, not. If I was walking straight in—so, I ran into all kinds of problems trying, and this is part of, I feel, is part of my complaint is that I ran into a lot of problems in trying to be day-to-day in a wheelchair that someone else, and I was not asking preferential treatment—I have problems with it because I knew new teachers were

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EXHIBIT 55

(p. 75) get in, I've also got to wait for the elevator. Any number of them—sometime they work, sometime they may be working and the engineers are using them, all of those

different kinds of factors are coming in at one time and another, and I can't get up in the morning knowing that I'm going to be faced with any of these problems on any particular days when those problems occur, so—I'm aware —I have no problems with—I'm not questioning the number of days that you have there that, that I was marked tardy.

Q Are you suggesting that on every instance since 1982 since you've been on day-to-day service that you have been tardy, it's been because of one of the reasons that you've just mentioned?

A No. I'm not saying that.

Q Are there any other reasons?

A No. Sometimes I may just have been tardy like any person on the job. I'm quite sure, I shouldn't be treated no differently than anyone else, other teachers may be tardy for many other reasons, car trouble, oversleep, you name it.

Q So, on some occasions those were some of the reasons?

A Yeah, or if I'm going to outlying areas, I've gone to schools—I have to gauge my time in how long it's going to take me to get there. When I was going to

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EXHIBIT 56

(p. 88) that correct?

A Usually 7:30, 7:35, usually, usually everyone has about a five-minute grace, I mean, that's usually the practice, I mean, but on paper it says 7:30.

Q But all teachers were required to report by 7:30, is that correct?

A Yes.

Q Now, I think you testified earlier that you objected to Mr. Thomas about the fact that you had to report to the office at 7:30 because it was difficult for you to get up—to get that far up the building and then get back to your classroom, is that correct?

A Yes, and it was arranged later where I would call; when I would get to my class I would just on the phone and I would call and tell them that I was here.

Q Okay. So, you say it was arranged later, so after you indicated to Mr. Thomas that you had this problem in coming up to the office and report, isn't it true that he allowed you to remain in your classroom and call into the office instead?

A Later on it was corrected, yes.

Q Later on. How much later?

A I, I don't know. I don't recall, to be frank.

Q Okay. Do you mean later as in after you complained to him, then sometime later he took care of it?

EXHIBIT 57

(p. 106) Q Okay. Did she indicate the reason for doing that might be that it would be then easier for you to get an assignment?

A Yeah. Uh-huh. That's what—She was just informing me of my—

Q Options?

A —options.

Q Did you ever do that, take any additional courses to broaden your certification?

A No.

Q Would you agree that if you would have done that you would be more likely to be placed in an assignment and get off of the day-to-day list?

A Probably. But, that was this year when all this had taken place, this, perhaps, winter. Maybe it was last year.

Q Okay. You're not sure when that conversation was?

A The conversation may have been last year. I don't know. It seemed like to me that it was—I've lost track of time. It could have been last fall or sometime; it could have been last year.

Q Okay. Do you think that you have a right to teach black studies in the Milwaukee Public Schools?

A Yes.

Q Based on what?

EXHIBIT 58

MPS MILWAUKEE PUBLIC SCHOOLS
DIVISION OF HUMAN RESOURCES

Administration Building
5225 West Vliet Street
P.O. Drawer 10K
Milwaukee, WI 53201
Area 414:475-8224

February 6, 1984

Jake Beason
4133 N 12 Street
Milwaukee, WI 53209

Dear Mr. Beason:

It is brought to my attention by the substitute dispatch office that you have indicated there are only two secondary schools which you may be assigned on day-to-day service because of adequate handicap facilities.

I have reviewed this matter with personnel in the Physical Plant Division and find the following secondary schools have fully equipped handicap facilities: Custer, Juneau, Lincoln Vocational Center, North Division, Pleasant View, South Division and Vincent. In addition, the new additions at both Bay View and Riverside are included in this category. It will be necessary for you to fulfill your duties as an appointed teacher in this school district by accepting a position in any of these schools when assigned by the substitute dispatch office.

It is also brought to my attention that you are consistently arriving at your assignments later than the starting time and this has occurred even though you have been contacted by the dispatch office early in the morning. It is hoped

that you are making every effort to arrive to your assignment on time as this constant tardiness presents a hardship to the students and other staff members in the building.

If you have any questions about these matters, please feel free to contact me at 475-8224.

Sincerely,

/s/ Kenneth E. Hitzke
KENNETH E. HITZKE
Staffing Specialist
Division of Human Resources

KEH/dd

copy to: Dr. Graham
Substitute Teacher Office

EXHIBIT 59

MPS MILWAUKEE PUBLIC SCHOOLS
DIVISION OF HUMAN RESOURCES

Administration Building
5225 West Vliet Street
P.O. Drawer 10K
Milwaukee, WI 53201
Area 414:475-8224

December 6, 1984

Jake Beason
4133 N 12 Street
Milwaukee, WI 53209

Dear Mr. Beason:

I wish to inform you that we have carefully reviewed the handicapped facilities in secondary schools relative to your assignments as a day-to-day appointed teacher. It has

been reported by the following schools that they have handicapped facilities which would permit you to be assigned to those schools without difficulty.

Bay View High School
Hamilton High School
Riverside High School
South Division High School
Lincoln Vocational Center
Vincent High School
Walker Middle School

Therefore, every effort will be made to assign you to these buildings so that you will have the proper facilities to enable you to complete your assignments as a day-to-day appointed teacher in the Milwaukee Public Schools.

If you have any questions concerning this matter, please contact me.

Sincerely,

/s/ Kenneth E. Hitzke
KENNETH E. HITZKE
Staffing Specialist
Division of Human Resources

KEH/dd

copy to: Mr. Neudauer
Substitute Teaching Office

EXHIBIT 60

MPS MILWAUKEE PUBLIC SCHOOLS
DIVISION OF HUMAN RESOURCES
Administration Building
5225 West Vliet Street
P.O. Drawer 10K
Milwaukee, WI 53201
Area 414:475-8227

February 4, 1986

CERTIFIED LETTER

Mr. Jake Beason
4133 North 12th Street
Milwaukee, WI 53209

Dear Mr. Beason:

It is brought to my attention that you have been absent from your position as a teacher on day-to-day service for forty-six days effective December 12, 1985. Therefore, according to the terms of the contract between the Milwaukee Board of School Directors, Part III, Section G, Paragraph 5d, "a formal leave shall be required of a certificated employee of the Board not later than the forty-sixth day of absence during a half year or after an employee has exhausted his/her accrued sick leave credit if such accumulation exceeds forty-five days."

We are enclosing an illness leave request form for you to complete and return to this office, along with a statement from your doctor indicating the reason for your illness. The forms will be forwarded to the Milwaukee Medical Clinic, and we will notify you of their decision concerning your request. It is brought to your attention

that leaves of absence for illness can be requested for one semester or one year in length.

I would bring it to your attention that during this period of time, if you wish to continue Blue Cross and life insurance coverage, it will be necessary for you to do this on a self-paid basis. I would suggest you contact 475-8158 about Health Insurance or 475-8215 about Group Life Insurance—Department of Employee Relations, Room 163, to make these arrangements.

In our telephone conversation of January 29, 1986, you were called in regard to an opening we had in Urban Studies at South Division High School. According to the contract, when a position becomes available, the senior teacher on day-to-day service with the proper certification must be assigned. You informed me that you could not take the assignment as you had applied for disability retirement. Inasmuch as you turned down the assignment, the position will be filled by the next senior teacher from the day-to-day list.

We must know your status as a teacher in the Milwaukee Public Schools. If you do not wish to apply for a formal illness leave and have gone on disability retirement, you must resign from your position.

If you have any further questions regarding this matter, please feel free to contact me at 475-8227.

Sincerely,

/s/ Helen H. Collins
HELEN H. COLLINS
Staffing Specialist
Division of Human Resources

HHC:bjm

Enclosure
CC: Substitute Teachers Officer

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

JAKE BEASON,

Plaintiff,

v.

MILWAUKEE BOARD OF SCHOOL DIRECTORS, et al.,

Defendants.

AFFIDAVIT IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT, DISMISSAL AND ALTERNATIVE MOTION IN LIMINE

Civil Action No. 85-C-261

STATE OF WISCONSIN)
)
MILWAUKEE COUNTY)

COMES NOW WILLIAM G. THOMAS, being first duly sworn and upon his oath, who deposes and states as follows:

1. Affiant is an adult male resident of the Village of Greendale, County of Milwaukee. Affiant is currently employed by the Milwaukee Board of School Directors, doing business as Milwaukee Public Schools (MPS). Affiant has been so employed since 1955. Affiant is currently assigned as the principal of Custer High School in said system and has been so assigned since September, 1973. Affiant makes this affidavit, unless otherwise noted, upon personal recollections and upon a review of records and files maintained in the ordinary conduct of business of the MPS and Custer High School. Affiant is competent in all manner to make this affidavit. Affiant knows and understands that this affidavit is made in support of defendants'

motion for summary judgment, dismissal and alternative motion in limine. Affiant is one of the above individually-named defendants.

2. Affiant has known the plaintiff, Mr. Beason, since 1948, when both he and Mr. Beason were involved in the interscholastic athletic program of MPS.

3. Mr. Beason was assigned to Custer High School in the fall of 1977.

4. Affiant first knew that Mr. Beason had been assigned to Custer High School on the Friday before Labor Day of 1977. On that date teachers not new to the system appeared at their assigned schools for an inservice program. When affiant met Mr. Beason, Mr. Beason was in a wheelchair. Affiant for the first time realized that Mr. Beason was confined to a wheelchair.

5. Affiant presented Mr. Beason with an elevator key immediately upon his seeing Mr. Beason and realizing that, since Mr. Beason was confined to a wheelchair, Mr. Beason would need an elevator key in order to fulfill the schedule as set for him.

6. A schedule is made for teachers to include rooms, students' names, lunch hours, study halls, and homerooms, without knowing, necessarily, the name of the teacher who will eventually occupy the role. A schedule was made for a teacher to handle social studies assignments by affiant's staff and under affiant's supervision during the months of June and August of 1977. At the time the schedule was made affiant did not know that Mr. Beason would fill the role, and in any event, did not know that Mr. Beason was confined to a wheelchair. Annexed hereto

and incorporated herein by reference as Exhibit No. 1 is a true and correct listing of Mr. Beason's rooms on his first assignment to Custer High School. Annexed hereto and incorporated herein by reference as Exhibits 1-A and 1-B are true and correct copies of the Custer High School floor plan.

7. At no time did Mr. Beason ever complain to affiant that the schedule of classes and the attendant requirement of moving between Rooms 65, 128 and 121 were beyond the abilities of Mr. Beason. The first knowledge affiant had of any difficulty Mr. Beason had with respect to ambulation about Custer High School was on or about February 8, 1978, when affiant received that which is annexed as Exhibit No. 2. Exhibit No. 2 is a true and correct copy of a letter dated February 3, 1978 from Thomas D. Graham, then Assistant Superintendent of the Division of Personnel of MPS, to Mr. Beason, explaining the reality that on January 18, 1978, Mr. Beason's then legal counsel, Frank J. Holton, wrote to Dr. Graham respecting both the assignment of Mr. Beason to Custer High School and the location of Mr. Beason's duties at Custer. That letter, in relevant portions, states:

> "Recent conversation with Mr. William Thomas, your principal, indicates that no additional information or concern had been expressed by you to him with respect to your teaching conditions at Custer High School beyond your initial contact, at which time Mr. Thomas presented you with an elevator key for use in the building."

8. On March 27, 1978, records had been apparently forwarded from Veterans Hospital to Central Administration, which confirmed that Mr. Beason was suffering from

a deteriorating physical condition, and that in consequence thereof, Mr. Beason should be given a single room in which to teach. Annexed hereto and incorporated herein by reference as Exhibit No. 3 is a true and correct copy of a letter affiant received from Dr. Graham dated March 27, 1978, advising affiant of this course of action.

9. At no time did Mr. Beason complain to affiant, even during the exchange of correspondence previously annexed as Exhibits No. 2 and 3, respecting his assignments and/or teaching schedule or claimed deteriorating condition.

10. Annexed hereto and incorporated herein by reference as Exhibit No. 4 is a true and correct copy of the summary of estimated teacher needs for the 1982-83 school year. It was originally prepared on May 29, 1982 and revised on June 22, 1982. Exhibit No. 4 demonstrates that the anticipated teacher needs for Custer High School required a drop of 16 teachers, two of whom were retiring and 14 of whom were being excessed. Exhibit No. 4 was revised after the production of a departmental work sheet dated June 2, 1982, and which is annexed hereto as Exhibit No. 11.

11. Annexed hereto and incorporated herein by reference as Exhibits 5, 6, 7, 8, 9 and 10 are true and correct copies of the Custer High School Schedule of Classes for the years 1977-78; 1978-79; 1979-80; 1980-81; and 1982-83 respectively. These documents demonstrate what actual teachers were on staff, and what subjects they taught at the start of each school year.

12. A review of Exhibit 5, the Custer High School Schedule of Classes for the 1977-78 school year demonstrates that a total of 14 teachers were needed to fill 43 sections of history which was taught that year. Mr. Beason was one of those teachers. Affiant notes from that schedule that Mr. Beason was assigned to teach one section of World Geography, a subject in which he was not certified.

13. A review of Exhibit 6, the Custer High School Schedule of Classes for the 1978-79 school year demonstrates that a total of 11 teachers taught 37 sections of history that year. Mr. Beason was one of those teachers. Affiant notes from a review of Exhibit No. 6 that Mr. Beason, as he had been in the previous year, was assigned to teach World Geography and Urban Studies. Mr. Beason was certified to teach Urban Studies only by virtue of holding licensure in Code 745.

14. A review of Exhibit 7, the Custer High School Schedule of Classes for the 1979-80 school year demonstrates that a total of 12 teachers taught 35 sections of History. Mr. Beason was one of those teachers. Mr. Beason taught four sections of Afro-American History, for which he was certified, and one section of World History, for which he also was certified.

15. A review of Exhibit 8, the Custer High School Schedule of Classes for the 1980-81 school year demonstrates that a total of 11 teachers taught 37 sections of History. Mr. Beason was one of those teachers. Mr. Beason taught five sections of Afro-American History. Mr. Beason was fully certified to teach that course load.

16. A review of Exhibit 9, the Custer High School Schedule of Classes for the 1981-82 school year will demonstrate that a total of 14 teachers taught 39 sections of History. Mr. Beason was one of those teachers. Mr. Beason taught three sections of Afro-History, one holding section, and one section of World History. Mr. Beason was fully certified to teach that course load.

17. A review of Exhibit 10, the Custer High School Schedule of Classes for the 1982-83 school year will demonstrate that a total of 11 teachers taught only 31 sections of History. By this time Mr. Beason had been excessed.

18. Based upon the information contained in Exhibit No. 4, by June, 1982, affiant was anticipating a drop in total enrollment at Custer High School of approximately 300 students.

19. There is a document which was generated by the Central Administration known as a student request tally. This document summarizes what courses students are requesting for the next school year. The tally was generated in approximately May, 1982 and no longer exists and cannot now be reconstructed. However, that sheet did provide information to affiant and other individuals at Custer High School respecting the numbers of students who were requesting any subject teachable at Custer High School. From the tally sheet, a work sheet was prepared for each departmental chairperson by the Data Processing Coordinator. Annexed hereto as Exhibit No. 11 is a true and correct copy of the work sheet prepared by the Data Processing Coordinator for the Social Studies Department of Custer High School respecting the anticipated needs for the 1982-83 school year. The first three columns entitled:

"Course," "Course Title," and "Total Number of Student Requests," is data generated from the tally sheet in raw fashion. The final two columns, "Number of Section" and "Number of Students in Section" is information which is created by the Data Processing Coordinator. The Data Processing Coordinator for Custer High School during the relevant time period was Mr. DiDonato. Mr. DiDonato recommended seven classes of World Geography, eight classes of World History and 19 classes of U.S. History. Affiant changed those figures to six classes of World Geography, seven classes of World History and 16 classes of U.S. History. Affiant changed the recommendation based upon an educated guess of what the actual enrollment at Custer High School would be in the fall of 1982. Normally, there is a 5½% to 6% drop in enrollment between the June projections and the September actual figures.

20. Annexed hereto and incorporated herein by reference as Exhibit No. 12, the Social Studies Departmental Work Sheet produced by the Social Studies Department Chairperson, Mr. Albert Siemsen dated June 2, 1982. Exhibit No. 12 was produced by the departmental chairperson based upon the work sheet which is Exhibit No. 11. If one goes down to the third teacher on the list, Mr. Engel, and proceeds through the entire list through Mr. Williams, it is seen that each teacher listed has a seniority date preceding that of Mr. Beason. The seniority dates appear to the immediate left of each individual's name. The seniority dates were written in by affiant from a list generated from MPS Central Administration. The seniority dates which appear were not written in by affiant at

the time of the events herein, they were written in for purposes of this litigation. They are, however, true and accurate seniority dates and reflective of information affiant had at the time of the events herein. A review of Exhibit 12 also demonstrates that initials appear to the right of each named teacher. This is so because each teacher must initial next to their name, indicating that they have reviewed their anticipated program for the following school year. The purpose is to give teachers an opportunity to prepare, if necessary, for their teaching assignments for the following school year.

21. A review of Exhibit 12 demonstrates that Mr. Beason does not appear as having a schedule of classes. The name of Mr. Beason does appear in the lower lefthand corner of the document and again, the name was written in by affiant for purposes of this litigation in order to compare seniority dates.

22. By the time Exhibit No. 12 was prepared, Mr. Beason was informed that he was being excessed. Affiant so informed Mr. Beason, although affiant cannot now reconstruct the exact date. It would have been in May or June, 1982. Affiant gave Mr. Beason a "Request for Reassignment" form which Mr. Beason could fill out and file directly with Helen Collins for purposes of reassignment. Affiant is the person who made the decision to excess Mr. Beason. The decision was not made because of Mr. Beason's race, or any statements Mr. Beason did or did not make regarding Blacks in society. It was made based upon the teacher needs of Custer, Mr. Beason's certification, and his seniority.

23. Attention is next invited to the two top lines of Exhibit No. 12 entitled "Teacher X" and "Teacher Y." Based upon the projected information from the student request tallies, it was anticipated in June, 1982 that there would be a need for eight new geography sections, five of which would be taught by then-unknown teachers and three of which would be taught by known teachers. At the point in time these decisions were being made, affiant was making educated estimates of what the actual situation would be.

24. At the point in time that anticipated student requests are being staffed, a principal only knows if a teacher will be excessed. Further, the teacher must be excessed if the teacher is not certified to teach the anticipated course. Mr. Beason was not certified to teach Geography. He was only certified to teach U.S. History and Sociology. Exhibit No. 12 demonstrates that all of the teachers who were available to teach U.S. History and Social Studies had earlier seniority dates than Mr. Beason. As a consequence, Mr. Beason had to be excessed.

25. An examination of Exhibit No. 10 hereto shows all of the teachers teaching Social Studies courses for the 1982-83 school year. Below is a summary of the teacher's name, certification, seniority date and subject taught:

Name	*Certification*	*Seniority Date*	*Subject Taught*
ENGEL	700	9/ 5/61	Justice and You U.S. History
HENTGES	725	9/ 5/59	U.S. History World History
HINZ	300 (English) 365 (Spanish) 725	9/ 6/55	U.S. History

Name	*Certification*	*Seniority Date*	*Subject Taught*
MOERTL	715 725 701	9/ 2/69	Urban Studies U.S. History World Geography
McNEELY	300 965 (Counseling) 700	9/ 7/65	Awareness Geography Guidance
PARKER	701 725 735	1/27/67	World History U.S. History
ROESSL	550	8/28/72	World Geography Art Foundations
SIEMSEN	250 (Bus.Ed.) 701 725	9/ 6/65	Urban Studies U.S. History
SPRINGER	700	9/ 7/65	U.S. History World Geography Economics
TREWYN	320 725 745	9/ 2/58	Urban Studies Minorities in American Soc.
WACK	701; 725 735; 745	9/ 6/60	Contemporary World Affairs, Sociology U.S. History
WHITMORE	700	9/ 1/70	Afro-American Studies World Geography
WILLIAMS	300 701 725	9/ 3/63	U.S. History World History
KOSIKOWSKI	300 320 725	1/25/78	Contemporary Lit. U.S. History

In addition to the foregoing, two teachers taught social studies courses to emotionally disturbed or mentally retarded pupils. Therefore, they required licensure to teach

those children in either mentally retarded or emotionally disturbed. They were:

Name	*Certification*	*Seniority Date*	*Subject Taught*
JORGENSEN	810 (MR)	9/ 2/69	U.S. History
O'HARA	830 (ED)	10/13/80	Urban Studies
PICKETT	810	8/30/71	American Government Driver's Education Math English

26. A review of the foregoing demonstrates that in every case, with one exception, a teacher was teaching courses with necessary certification which Mr. Beason did not have, or had greater seniority than Mr. Beason, or both. The one exception is Ms. Roessl, who occupied a position teaching Art and Geography, consistent with affiant's requests. Ms. Roessl should not have taught Geography. Affiant now understands she was not certified to teach the course. Mr. Beason was not certified to teach Geography, however, he had done so during the first two years of his assignment to Custer. Affiant notes that one Ms. Alice Olson taught a course called Human Relations. This is because she was appointed the Human Relations Coordinator for the school by affiant. The course is not a Social Studies course, and no particular certification is needed for teaching it.

27. No person at the Central Administration instructed affiant to excess Mr. Beason. Affiant did not then, nor has he since, looked at the personnel file of Mr. Beason. Affiant is aware that Mr. Beason has written on his views of the role of blacks in American society and culture. The

only specific recollection affiant has of reading such articles occurred when Mr. Beason was assigned to affiant's high school on a day-to-day/substitute teacher capacity after he was excessed. Affiant recollects complimenting Mr. Beason on what Mr. Beason wrote. Affiant has had an opportunity to review Exhibits 1 through 5 of the deposition of Mr. Beason taken on May 19, 1986. Affiant verily believes that Exhibit No. 1 thereto is the article which Mr. Beason wrote and with which affiant agreed—that black students had very little if any knowledge of their culture and background because they were deprived of this when they were imprisoned and brought to the U.S. as slaves. Affiant, in fact, verily believes that he personally complimented Mr. Beason on Exhibit No. 1 to the Beason deposition of May 19, 1986.

28. If a teacher believes he or she has been improperly excessed, complaints may be made to the MTEA or School Administration. To affiant's knowledge, Mr. Beason never lodged any such complaints. Once a principal excesses a teacher, the principal is not in a position to reassign the teacher—even to the same high school. Whether or not a teacher obtains a subsequent assignment is a matter which is not handled by the principal, but is a matter which is handled by the Central Administration.

29. The excessing of Mr. Beason was done in accordance with Part V, Section G, Paragraph 1, which states:

> G. REASSIGNMENT
>
> Once assigned to a building, teachers will not be involuntarily reassigned, except in cases of reduction in enrollment, voluntary transfers, assignment of relatives, conduct, or evaluation as defined below.
>
> REDUCTION IN ENROLLMENT. When a reduction in the number of teachers is necessary, qualified

volunteers shall be first reassigned. Then reassignment shall be made on the basis of years of service in the Milwaukee system with those teachers most recently appointed to the school system being reassigned first, except where departmental, necessary extra-curricular, kindergarten, primary, intermediate, or upper grade levels prevail.

30. Annexed as the third page to Exhibit No. 4 is the estimated teacher needs which affiant requested for Custer High School. Lines 4 and 5 reflect that affiant was looking for an individual qualified to teach French and Social Studies and Art and Social Studies. Affiant, in requesting a teacher qualified to teach Social Studies, was in fact looking for a Code 700 Social Studies teacher. Such teacher would be qualified to teach Geography, History or any of the areas normally covered by Social Studies.

31. Annexed hereto and incorporated herein by reference as Exhibit No. 13 is the summary of actual teacher needs for Custer High School for the 1982-1983 school year. It is dated September 13, 1982 and revised September 24, 1982. This document takes into account changes in projected enrollment and staff needs occurring after June and by the third Friday of the school year.

32. Page 2 of Exhibit No. 13 sets forth the actual needs Custer High School had as of the third Friday of the school year. Affiant needed an Art-World Geography teacher. Ms. Claudia Roessl filled that role. Affiant needed a World Geography-Afro Studies teacher because Mr. Matthew McNeely, who had originally been assigned to teach those courses was promoted to a guidance counseling position at Custer High School. Affiant also needed an English-History teacher. The World Geography-Afro Studies posi-

tion vacated by Mr. McNeely was filled by Mr. Donald Whitmore and the English-History position was filled by Claire Kosikowski.

33. Annexed hereto and incorporated herein by reference as Exhibit No. 14 is a true and correct copy of a note sent to one Corinne Gross dated February 8, 1978, indicating that Mr. Beason was 20 minutes late on February 8, 1978. By February 12, 1978, Mr. Beason still had not signed his tardy card, and annexed hereto and incorporated herein by reference as Exhibit No. 15 is a true and correct copy of a note dated February 12, 1978, affiant sent to Mr. Beason informing Mr. Beason that he should sign the tardy card. Annexed hereto and incorporated herein by reference as Exhibit No. 16 is a true and correct copy of a note dated February 13, 1978, which affiant received from Corinne Gross indicating that Mr. Beason still had not signed his tardy card.

34. As a result of Mr. Beason not signing his tardy card, affiant sent him a letter on April 18, 1978, a true and correct copy of which is annexed hereto and incorporated herein by reference as Exhibit No. 17. At the bottom of Exhibit No. 17 appears a note affiant made. As a result of the meeting which was held, it was agreed that Mr. Beason understood that he must call if he is late, and that he will be at his assigned room at or about 7:30 a.m. Affiant also inquired of Mr. Beason as to how handling only one room is working, and affiant was informed by Mr. Beason that it was working out well.

35. On June 8, 1978, affiant inquired of Mrs. Gross as to the instances that Mr. Beason was late following the agreement reached on April 18, 1978. Affiant received the

annexed Exhibit No. 18, indicating that Mr. Beason was 30 minutes late on each of the following dates: April 18, 1978, the date of the meeting in the first instance, May 10 through May 12, 1978 and June 7 and June 8, 1978. Mr. Beason was tardy 30 minutes each time.

36. On or about September 25, 1978, affiant had a meeting with Mr. Beason regarding tardinesses. As a result of that meeting further understandings were arrived at between Mr. Beason and affiant regarding tardinesses. Among them, that Mr. Beason would phone the switchboard before 7:30 a.m. when he arrived, and that he would telephone from Room 61. Affiant reviewed those understandings in a letter dated October 4, 1978, a true and correct copy of which is annexed hereto and incorporated herein by reference as Exhibit No. 19. Affiant wrote the letter of October 4, 1978 because Mr. Beason, notwithstanding those understandings, nonetheless was tardy on September 29, October 2, and October 3, 1978. He was late anywhere from five to 35 minutes. On the face of the copy of the document affiant recorded that Mr. Beason would be given a key to Room 61.

37. Annexed hereto and incorporated herein by reference as Exhibit No. 20 is a true and correct copy of a note affiant sent to Mr. Beason regarding a tardiness of October 2, 1978. Affiant excused the tardiness of Mr. Beason because he had received a traffic ticket.

38. Annexed hereto and incorporated herein by reference as Exhibit No. 21 is a true and correct copy of a note affiant received from Corinne Gross dated October 5, 1978, indicating that Mr. Beason phoned 15 minutes late. Affiant excused the tardiness because a review of the records and

files of Mr. Beason's payroll indicated he did not have any salary deducted for that lateness.

39. Annexed hereto and incorporated herein by reference as Exhibit No. 22 is a true and correct copy of a note dated October 6, 1978, indicating that Mr. Beason called the office at 7:34 a.m. A review of payroll records for the day in question indicates that affiant did not cause a deduction in Mr. Beason's pay for that tardiness.

40. Annexed hereto and incorporated herein by reference as Exhibit No. 23 is a true and correct copy of a memo from Corinne Gross dated October 13, 1980. It indicates that a person by the name of "Nancy," who was a clerical worker in the office at Custer, received a call from Mr. Beason at 7:40 a.m., claiming he had a student call for him. Annexed hereto and incorporated herein by reference as Exhibit No. 24 is a note affiant wrote, indicating that Mr. Beason was to call in himself and not have students call. The tardiness was not excused.

41. Annexed hereto and incorporated herein by reference as Exhibit No. 25 is a true and correct copy of a memo maintained by Corinne Gross to affiant, indicating that on October 9, 1978, Mr. Beason was not present for school, nor did he call the office. Affiant did not cause a deduction in Mr. Beason's salary for this absence.

42. Annexed hereto and incorporated herein by reference as Exhibit No. 26 is a true and correct copy of a memorandum dated October 11, 1978, signed by affiant and addressed to Mr. Beason regarding his tardiness problems. This document indicates that a meeting was set for October 13, 1978 regarding the matter.

43. Annexed hereto and incorporated herein by reference as Exhibit No. 27 is a true and correct copy of a memorandum dated October 16, 1978, memorializing what transpired at the October 13, 1978 meeting. As a result of this meeting, a door key was furnished to Mr. Beason for Homeroom 61. Mr. Beason was to call the office from Room 61 or wherever his homeroom was located, before 7:30 a.m. Calls after 7:30 a.m. would be reason to invoke the tardy deduction policy. A copy of this memorandum was sent to Frank J. Holton, Mr. Beason's attorney, and to John Hayes, the MTEA building representative to Custer High School.

44. Annexed hereto and incorporated herein by reference as Exhibit No. 28 is a true and correct copy of an unsatisfactory report of teacher evaluation dated October 24, 1978, regarding Mr. Beason's unsatisfactory and excessive tardiness. Mr. Beason signed the instrument.

45. Annexed hereto and incorporated herein by reference as Exhibit No. 29 is a true and correct copy of a tardy card dated October 30, 1978. Affiant has had an opportunity to review payroll records for the date in question, and notes affiant did not cause a deduction in the pay of Mr. Beason for his lateness.

46. Annexed hereto as Exhibit No. 30, pages "A" through "R," is a true and correct copy of a memo dated January 8, 1979, setting forth Mr. Beason's absences on the dates indicated, together with the underlying notes affiant received. No deductions were made for all of these absences. Affiant stated:

> You will also note that no deductions were made with the hope that you, as you stated in my office, would be here on time, and resolve your personal problems which led to the problem of tardiness.

> Effective with this letter deductions will be made based on your call-in time to the switchboard. Occasionally tardiness is understandable, but the pattern listed above speaks for itself.

47. Annexed hereto and incorporated herein by reference as Exhibit No. 31 is a letter affiant sent to Mr. Beason dated June 8, 1978. It memorializes the fact that on June 7 and 8, 1978, Mr. Beason was not in his assigned area when it was checked. Affiant was able to ascertain that Mr. Beason was 30 minutes late on each of those days. Accordingly, affiant sent Exhibit No. 32, which is a true and correct copy of a memorandum to Mr. Beason, indicating that a meeting would be held on [sic] affiant's office on June 13, 1978, regarding the matter. Affiant made a note on June 14, 1978, memorializing the results of the meeting. The note states: "Conference-decision to stop proceedings will seek a transfer to North or South—layout for physical handicap."

48. Exhibit 32 memorializes the fact that Mr. Beason made a decision to attempt to seek a voluntary transfer from Custer High School back to North Division or South Division High School. In fact, Mr. Beason never did transfer.

49. Annexed hereto and incorporated herein by reference as Exhibit No. 33 is a true and correct copy of an evaluation affiant performed regarding Mr. Beason dated June 1, 1981. In the evaluation affiant stated: "Afro-American teacher, very knowledgeable and concerned about the direction of black education—can be and will be a motivation to young students."

50. Annexed hereto and incorporated herein by reference as Exhibit No. 34 is a true and correct copy of a letter

dated September 9, 1982, affiant sent to Mr. Beason thanking him for his years of service at Custer High School, following the decision to excess him.

51. Affiant has had an opportunity to review ¶ 4 of the Affidavit of Frances M. Nardelli and ¶ 9 of the Affidavit of Raymond Williams. Affiant knows that John Losiniecki, Benjamin I. Chadwick, Herbert J. Royal, Steven Ahl and Jerome Trewyn are all staff members at Custer High School. It is affiant who determines whether an absence will be excused or unexcused.

52. Whether or not a particular section of any course is actually taught in any given semester depends on how many students actually sign up for the class. Although a course may be offered, whether or not a course is actually conducted will be determined by the number of students signing up.

Further affiant saith naught.

/s/ William G. Thomas
WILLIAM G. THOMAS

Subscribed and sworn to before
me this 1st day of August, 1986.

/s/ Karen Y. Reid

Notary Public, State of Wisconsin
My Commission: 11-26-89
BDS: pml

(Exhibits lodged with Clerk)

OFFICE COPY

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

JAKE BEASON,

Plaintiff,

v.

MILWAUKEE BOARD OF SCHOOL DIRECTORS, et al.,

Defendants.

AFFIDAVIT IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT, DISMISSAL AND ALTERNATIVE MOTION IN LIMINE

STATE OF WISCONSIN)
MILWAUKEE COUNTY)

Civil Action No. 85-C-261

COMES NOW HELEN COLLINS, being first duly sworn and upon her oath, who deposes and states as follows:

1. Affiant is a black adult female resident of the City of Milwaukee, Milwaukee County. Affiant is currently employed by the Milwaukee Board of School Directors, doing business as Milwaukee Public Schools (MPS), and has been so employed since September, 1966. Affiant's current position with MPS is Secondary Staffing Specialist and she has served in that position since August, 1979. Affiant makes this affidavit, unless otherwise noted, upon personal recollections and upon a review of records and files maintained in the ordinary conduct of business of MPS. Affiant is competent in all manner to make this affidavit. Affiant knows and understands that this affidavit is made in support of defendants' motion for summary judgment, dismissal and al-

ternative motion *in limine*. Affiant is one of the individually-named defendants in this action.

2. As Secondary Staffing Specialist, affiant is responsible for the staffing of all secondary teacher positions in MPS, which is to be done in accordance with Department of Public Instruction, MPS, and labor contract requirements. Affiant administers and coordinates teacher assignments and reassignments. Affiant also interviews teacher candidates for employment at the secondary level and reviews and recommends teacher applications for appointment to the Assistant Superintendent-Human Resources.

3. To the best of her recollection, affiant first met the plaintiff, Mr. Beason, in approximately 1968 or 1969, when affiant worked as a teacher at Parkman Middle School in MPS and Mr. Beason's late wife worked as a teacher aide at that school. Affiant has seen Mr. Beason in person on approximately three occasions in total. Affiant has spoken with Mr. Beason on the telephone on approximately five occasions. All of these phone conversations occurred after Mr. Beason was excessed from Custer High School in August, 1982.

4. Each school year it is affiant's responsibility to fill secondary school teacher vacancies which have been created by excessing, transfers and retirements. This staffing is begun on paper by affiant during the first week of July, in accordance with the federal court desegregation order. Affiant has reviewed the July 8, 1986 deposition of Donald Ernest and states that Mr. Ernest has correctly described the staffing process at pages 12-38. Affiant reviews all of the Estimated Teacher Needs Reports for secondary schools that are provided by the principals. These reports show the

estimated number of teacher vacancies at each school for the upcoming school year. The reports also show the subject area in which the vacancy exists and the Department of Public Instruction certification necessary to fill that position. Based on the Estimated Teacher Needs Reports, affiant compiles a list of all the teacher vacancies at the secondary level for the upcoming school year which exist as of July. This list will hereinafter be referred to as the "vacancy list."

5. At affiant's direction, a computer print-out is prepared which lists all secondary teachers who are unassigned as of July. Included on this list are: (a) teachers returning from leave (b) all teachers who have requested transfers (c) teachers who received 281T transfers (a principal can request a teacher be transferred because he or she does not meet the mode of instruction at that school and who would, in the principal's opinion, be better in another setting) (d) teachers who were excessed from their assignments, and (e) teachers remaining on the day-to-day list from the previous school year. This list is called the Teacher Reassignment Print-out. Information on the Reassignment Print-out includes the teacher's name, address, social security number, ethnic code, sex, seniority date, contract offer date, last reassignment date, reason for reassignment, and the subjects and locations requested by teacher.

6. When both the vacancy list and the Teacher Reassignment Print-out have been compiled, affiant assigns teachers from the Reassignment Print-out to fill vacancies on the vacancy list, making the assignments based on licensure, seniority and racial balance. Teachers who do

not have sufficient seniority and/or proper licensure to fill a vacancy are placed on day-to-day assignment. (*See also* Ernest dep., pp. 19-22). All teachers on the Reassignment Print-out are either assigned to a school or placed on day-to-day assignment. Assignment notices are then sent to these teachers the first week in August.

7. Teachers on day-to-day assignment do not have a regular school assignment, but are sent throughout the school system as substitute teachers. Teachers on day-to-day assignment receive regular school assignments as new vacancies arise. Teachers on the day-to-day list are assigned to such vacancies based on seniority and licensure. (*See also* Ernest dep. pp. 26-27).

8. If, after going through the entire Reassignment Print-out, affiant has been unable to fill all vacancies with properly certified teachers, affiant reviews all teacher employment applications on file to determine whether any applicants are certified to fill the vacant positions. If so, affiant may conduct interviews and may hire such persons to fill the vacancies. Affiant may also consult with the MPS substitute teacher office to determine whether there are any properly certified teachers currently substitute teaching for the school system who might be interested in a regular teaching assignment. If there are no interested substitute teachers and no applicants possess the necessary certification, affiant may assign a day-to-day teacher who is not properly certified until affiant is able to locate a properly certified teacher through the advertising and hiring process. The school system may not advertise for teachers if there are too few vacancies to justify the expense of advertising. In such situations, a day-to-day

teacher will be placed temporarily in the vacancy, even though the teacher does not possess the necessary licensure.

9. All of the staffing done during the summer is based on the estimated student enrollment. A final system-wide staffing, based on actual enrollment, is done during the third week in September. This is referred to as the "third Friday staffing." At that time, affiant reviews the Actual Teacher Needs Reports submitted by secondary school principals. Affiant assigns teachers from the day-to-day list to fill the additional vacancies reported by principals. Assignments are made based on licensure, seniority, and racial balance. If no properly certified teachers are available from the day-to-day list to fill the vacancies, affiant will again review teacher applications on file and consult with the substitute office. If there are no interested substitute teachers and if no applicants possess the necessary certification, affiant may attempt to hire a properly certified teacher, or affiant may temporarily assign a day-to-day teacher who is not properly certified. After the third Friday staffing there are no more city-wide reassignments until the following school year. The only reassignments during the year would be due to teachers resigning or retiring.

10. Affiant first learned that Mr. Beason would be excessed from Custer High School when she received the 1982-1983 Estimated Teacher Needs Report from Custer High School. Mr. Beason was included on a list of 14 teachers to be excessed from that school. *See* Custer High School 1982-1983 Estimated Teacher Needs Report, attached hereto and incorporated herein by reference as Exhibit A4-A6.

11. At the time affiant received this Estimated Teacher Needs Report, affiant had only met Mr. Beason on one occasion in 1968 or 1969, when both affiant and Mr. Beason's late wife worked at the same school. (See ¶ 3). At the time she received the 1982-1983 Estimated Teacher Needs Report, affiant had never spoken to Mr. Beason at any other time, either on the telephone or in person.

12. After affiant received the 1982-1983 Estimated Teacher Needs Report, Mr. Beason's name, along with the names of all teachers excessed from throughout the school system, was included on the Reassignment Print-out. (See ¶ 5). Approximately 1025 teachers were listed on the print-out. During the first week of July, 1982, affiant personally went through both the vacancy list and the Reassignment Print-out and assigned teachers to vacancies based on the teacher's licensure and seniority, and in consideration of the court-ordered racial balance within the schools.

13. Mr. Beason's licensure at that time (and currently) was History (725) and Sociology (745). His seniority date was, and still is, January 23, 1968.

14. Copies of all the 1982-1983 Estimated Teacher Needs Reports for secondary schools are attached hereto and incorporated herein by reference as Exhibits A1-A78. A review of these reports shows there was only one vacancy for a History (725) teacher at that time. This can be seen by looking at Part III, Vacancies (p. 3) of each High School 1982-1983 Estimated Teacher Needs Report, which lists all vacancies anticipated at that time for the 1982-83 school year. At Part III, the principal lists the subject in which there will be a vacancy, the license(s) required to

teach the subject, and the number of classes to be taught. If, for instance, a vacancy is listed as "History/Mathematics" or "English and Science," the assigned teacher from the Reassignment Print-out should possess the licensure necessary to teach both those courses.

15. The one History (725) vacancy occurred at Rufus King High School. Mr. Beason was not qualified to fill this position, due to the special program at that school. Rufus King is a speciality high school for the college-bound, and MPS has determined that all teachers at that school must meet certain criteria in the subject they teach. MPS and the MTEA therefore entered into a Memorandum of Understanding on June 19, 1978, allowing deviation from the collective bargaining agreement so that teachers at Rufus King are required to have either previous teaching experience in a college preparatory specialty school or class, 15 graduate credits in the area in which they teach, or a master's degree in the area in which they teach. The Memorandum of Understanding is attached hereto and incorporated herein by reference as Exhibit B1-B2. Mr. Beason's employment records and transcripts, on file with MPS, show that he does not have a graduate degree or 15 graduate credits in History, nor does he have teaching experience in a college preparatory specialty. Mr. Beason therefore was not qualified for the History (725) position at Rufus King and could not have filled that vacancy.

16. Because there were no History and/or Sociology vacancies as of the first week of July, 1982 for which Mr. Beason was qualified, Mr. Beason could not receive a permanent assignment at that time and was therefore placed on day-to-day service.

17. Affiant conducted the 1982-1983 third Friday staffing based on the 1982-1983 Actual Teacher Needs Reports for all secondary schools. These reports are attached hereto and incorporated herein by reference as Exhibits C1-C45. A review of the 1982-1983 Actual Teacher Needs Reports for all secondary schools shows there were two vacancies for a History or Sociology teacher with Mr. Beason's certification. This can be seen by looking at Part III, Staff Expansions (p. 2) of each High School 1982-1983 Actual Teacher Needs Report, which lists all additional vacancies identified by the principals for the 1982-1983 school year.

18. The two Sociology and/or History vacancies identified through the 1982-1983 Actual Teacher Needs Reports occurred at Marshall High School (*see* Exh. C14-C15) and Washington High School. (*See* Exh. C28-C29) At the time of the 1982-1983 third Friday staffing, Mr. Beason was a teacher on the day-to-day list. He was not entitled, however, to a permanent assignment in either the vacancy at Marshall or the one at Washington, for the reasons set forth in paragraphs 19 and 20 below.

19. In accordance with the excessing procedure agreed to by MPS and the MTEA, if a teacher is excessed from a building in the spring or summer and a vacancy for which that teacher is certified later occurs at the school before the third Friday staffing, that teacher is entitled to return to that position. The Marshall High School 1982-1983 Estimated Teacher Needs Report dated May 28, 1982 and revised on June 22 and July 1, 1982, shows that the principal excessed a white teacher named Donald Barczak who had a History (725) license. (*See* Exh.

A23) The Marshall High School 1982-1983 Actual Teacher Needs Report, dated September 13, 1982, shows that the principal requested a U.S. History and World History teacher with a History (725) license. Because Donald Barczak was the most senior History (725) teacher to have been excessed in Spring, 1982, and because the History vacancy at Marshall occurred before the third Friday staffing in 1982, Mr. Barczak was entitled to return to the History position at Marshall. Mr. Barczak's assignment notices, attached hereto and incorporated herein by reference as Exh. D, show that Mr. Barczak was in fact returned to his previous History position at Marshall.

20. The Washington High School 1982-1983 Estimated Teacher Needs Report, dated May 28, 1982, shows that the principal excessed a black teacher named James Gordon. Mr. Gordon possessed a Broad Field Social Studies (701) license and a Sociology (745) license. (*See* Exh. A44) The Washington High School Actual Teacher Needs Report, dated September 13, 1982, shows that the principal requested a Social Studies teacher with 725 and 745 licenses. Because James Gordon had been excessed from Washington in May, 1982, and because the Social Studies vacancy for which he was certified occurred before the third Friday staffing in 1982, Mr. Gordon was entitled to return to his Social Studies position at Washington. Mr. Gordon's assignment notices, attached hereto and incorported herein by reference as Exh. E, show that Mr. Gordon was in fact returned to his previous Social Studies position at Washington.

21. Mr. Beason remained on the day-to-day lists for 1983-1984, 1984-1985, and 1985-1986 because no vacancies

arose for which he was certified. Again, this can be seen by reviewing the Estimated and Actual Teacher Needs Reports for those years. The Estimated and Actual Teacher Needs Reports for those years are attached hereto and incorporated herein by reference as follows:

1983-1984 Estimated Teacher Needs Reports—Exhs. F1-F74

1983-1984 Actual Teacher Needs Reports—Exhs. G1-G48

1984-1985 Estimated Teacher Needs Reports—Exhs. H1-H80

1984-1985 Actual Teacher Needs Reports—Exhs. I1-I53

1985-1986 Estimated Teacher Needs Reports—Exhs. J1-J80

1985-1986 Actual Teacher Needs Reports—Exhs. K1-K56

22. The North Division High School 1983-1984 Estimated Teacher Needs Report shows a Social Studies vacancy with a license requirement of "700, 725, or 735." (*See* Exh. F35) The principal at North Division was seeking a teacher who held both a 700 and a 725 license *or* both a 700 and a 735 license. Mr. Beason did not possess a 700 license and therefore could not have filled the position. Affiant placed Mr. Stanley Johnson in the position. Mr. Johnson possessed both a 700 and a 725 license.

23. The 1982-1983 Actual Teacher Needs Report for Custer High School shows that, following Mr. Beason's excessing from that school, the principal, Mr. Thomas, had three vacancies within the Social Studies Department. That Teacher Needs Report is attached hereto as Exh.

C4. Affiant was responsible for filling these vacancies and did so. One vacancy was an Art/World Geography position requiring an Art (550) license and a Geography (715) license. Mr. Beason could not have filled this position because he did not possess either of the necessary licenses. Affiant was unable to fill this position with a properly certified teacher because there was no one on the day-to-day list with the necessary combination of licenses, nor were there any applications on file for teachers with that combination of licenses. Affiant therefore placed Claudia Roessl, a teacher on the day-to-day list, in the assignment on a day-to-day basis. Ms. Roessl was placed in the position because she had previously taught at Custer High School and did possess an Art (550) license, although she did not possess a Geography (715) license. If, during the 1982-1983 school year, a teacher possessing both a 550 and 715 license had become available, that teacher would have been assigned to Custer and Ms. Roessl removed and returned to day-to-day assignment.

24. The second Social Studies vacancy at Custer High School for the 1982-1983 school year was a World Geography/Afro-American Studies position. Mr. Beason did not possess the necessary licensure for World Geography and therefore could not have filled the position. Affiant placed Mr. Donald Whitmore in the position, who was the most senior person on the day-to-day list at the time who possessed the necessary certification to teach both courses. Mr. Whitmore had a 700 Social Studies All license, which certified him to teach both World Geography and Afro-American Studies.

25. The third Social Studies vacancy at Custer was an English/History position requiring both an English

(300) and a History (725) license. Mr. Beason could not have filled this position because he did not possess an English (300) license. Affiant assigned Ms. Claire Kosikowski to the position from the day-to-day list. Ms. Kosikowski held both of the necessary licenses.

26. At no time has anyone within MPS told affiant where or how to assign Mr. Beason while he was on the day-to-day list. All such decisions are made by affiant based on her knowledge of the teacher collective bargaining agreement, the Department of Public Instruction requirements regarding teacher certification, and the assignment criteria regarding seniority, licensure, and racial balance.

27. At no time prior to the filing of this lawsuit did affiant look at or review Mr. Beason's personnel file, nor would affiant have had reason to do so.

28. Affiant has heard that Mr. Beason was vocal about black rights during the 1960s, but affiant never heard Mr. Beason speak on such subjects. Affiant's knowledge that Mr. Beason had spoken on black rights during the 1960s had no influence whatsoever on any assignment decisions made by affiant affecting Mr. Beason.

29. Prior to the filing of this lawsuit, affiant had no knowledge that Mr. Beason had written articles for various publications regarding black rights. Affiant has never read any such articles.

30. Mr. Beason's race has in no way influenced any of the assignment decisions made by affiant regarding Mr. Beason.

31. A History (725) license is considered to be a narrow license, since it allows the teacher to teach only history courses. A broader social studies license, however, such as a 700 or 701, allows the teacher to teach a variety of courses within the social studies curriculum. Affiant's experience has indicated that principals generally will request teachers who possess either a 700 or 701 license to fill social studies vacancies, because these teachers will then be capable of teaching a variety of courses at the school.

32. During the 1983-1984 school year, a number of teachers on the day-to-day list possesed the History (725) license which, for the reasons described in ¶ 31 above, limited their ability to receive a social studies assignment. Therefore, affiant's supervisor at the time, former Assistant Superintendent Thomas Graham, instructed affiant to contact all teachers on the day-to-day list who possessed a History license and ask whether those persons were interested in taking additional college courses to broaden their certification and thus increase their chances of obtaining a permanent assignment. Affiant contacted those teachers, including Mr. Beason. Affiant explained to Mr. Beason the limiting nature of his History (725) license and the demand for teachers with broader social studies certification. Affiant further explained to Mr. Beason that broadening his certification would increase the likelihood of receiving a permanent teachng [sic] assignment. Mr. Beason stated he had no intention of returning to school to obtain a broader certification.

33. During January, 1986, an Urban Studies position at South Division High School became vacant due to the

retirement of a teacher. At the time, Mr. Beason was the most senior teacher on the day-to-day list who was properly certified to teach this course. Affiant therefore contacted Mr. Beason by telephone on January 29, 1986, and offered him the assignment. Mr. Beason stated he could not take the assignment because he had applied for disability retirement. This conversation was confirmed in a certified letter dated February 4, 1986 from affiant to Mr. Beason. This letter is attached hereto and incorporated herein by reference as Exh. L.

/s/ Helen Collins
HELEN COLLINS

Subscribed and sworn to before me
this 5 day of August, 1986.

/s/ Yvonne Johnson
Notary Public, State of Wisconsin
My Commission: May 21, 1989

SDB:pml:cfs SEAL
8/5/86

(Exhibits lodged with Clerk)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

JAKE BEASON,

Plaintiff,

v.

MILWAUKEE BOARD OF SCHOOL DIRECTORS, et al.,

Defendants.

SCHEDULING ORDER

C.A. No. 85-C-261

During the scheduling conference held by telephone in the above-entitled action on May 15, 1986, the plaintiff, represented by attorney Robert E. Sutton, and the defendants, represented by attorneys Susan Bickert and Bruce Schrimpf, agreed to the entry of the following order.

IT IS ORDERED that:

1. On or before August 7, 1986, all dispositive motions shall be served and filed with the court.

2. All requests for discovery shall be served by a date sufficiently early so that all discovery in this case can be completed no later than July 31, 1986. Neither the pendency of motions nor settlement discussions shall affect any of the dates set in this action, and neither shall justify delays in the taking of discovery.

3. On Thursday, September 25, 1986 at 9:00 a.m., a final pretrial conference will be held in Room 471, Federal Building, 517 East Wisconsin Avenue, Milwaukee, Wisconsin. A copy of the order prior to the final pretrial conference is attached.

4. This case will be tried to a jury, and the estimated trial time is five days. The jury shall be composed of eight persons with no fewer than six jurors deciding the case. This case will be called for trial at 9:30 a.m. on Monday, October 20, 1986, or every Monday thereafter.

Dated at Milwaukee, Wisconsin, this 20 day of May, 1986.

BY THE COURT:

/s/ John W. Reynolds
John W. Reynolds
Chief Judge